

4-6-2015

Capstar Radio Operating Co. v. Lawrence Clerk's Record Dckt. 42326

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,)
a Delaware Corporation)

Plaintiff)

vs)

DOUGLAS LAWRENCE and BRENDA J)
LAWRENCE, husband and wife)

Defendants)
_____)

Supreme Court Docket No. 42326-2015

Kootenai County Docket No. 2002-7671

AUGMENTED
CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the
County of Kootenai

HONORABLE STEVE VERBY
District Judge

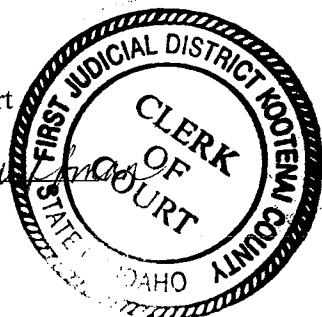
Attorney - Plaintiff
Susan P Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814

Attorney - Defendant
William J Carr
PO Box 285
Lewiston, ID 83501

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this
April 6, 2015

JIM BRANNON
Clerk of District Court

By: *Sherry H. Brannon*
Deputy Clerk



Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
11/7/2002	NEWC	SATERFIEL	New Case Filed John T. Mitchell
		SATERFIEL	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Owens, James Receipt number: 0545626 Dated: 11/07/2002 Amount: \$77.00 (Check) John T. Mitchell
	MOTN	SMITH	Ex Parte Motion for Temporary Restraining Order John T. Mitchell
	AFFD	SMITH	Affidavit of Conrad Agte in Support of Motion for Temporary Trestraining Order John T. Mitchell
	AFFD	SMITH	Affidavit of Susan Weeks in Support of Motion for Temporary Restraining Order John T. Mitchell
	SUMI	LEITZKE	Summons Issued John T. Mitchell
11/8/2002	TROI	LEITZKE	Temporary Restraining Order Issued John T. Mitchell
	BNDC	SATERFIEL	Bond Posted - Cash (Receipt 545778 Dated 11/08/2002 for 1000.00) John T. Mitchell
		SATERFIEL	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Owens, James, Vernon & Weeks Receipt number: 0545779 Dated: 11/08/2002 Amount: \$3.00 (Check) John T. Mitchell
		SATERFIEL	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Owens, James, Vernon & Weeks Receipt number: 0545779 Dated: 11/08/2002 Amount: \$1.00 (Check) John T. Mitchell
11/13/2002	HRSC	THORNE	Hearing Scheduled (Preliminary Injunction 11/15/2002 09:30 AM) John T. Mitchell
	NOTH	SATERFIEL	Notice Of Hearing John T. Mitchell
11/14/2002	AFSV	SMITH	Affidavit Of Service John T. Mitchell
	AFSV	SMITH	Affidavit Of Service John T. Mitchell
11/15/2002	HRHD	THORNE	Hearing result for Preliminary Injunction held on 11/15/2002 09:30 AM: Hearing Held John T. Mitchell
11/21/2002	ORDR	THORNE	Preliminary Injunction Order John T. Mitchell
12/2/2002		GLASS	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Ian Smith Receipt number: 0548182 Dated: 12/02/2002 Amount: \$47.00 (Check) John T. Mitchell
	NOAP	GLASS	Notice Of Appearance ONLY John T. Mitchell
12/20/2002	NOTC	SMITH	Notice of First Access John T. Mitchell
1/14/2003	NOTC	HILDRETH	Notice of Second Access John T. Mitchell
5/12/2003	NOTC	SMITH	Notice of Third Access John T. Mitchell
7/22/2003	AFFD	NORIEGA	Affidavit of Daniel E. Rebeor In Support of Motion For Temporary Restraining Order John T. Mitchell
3/26/2003	MNWD	SATERFIEL	Motion For Leave To Withdraw As Attorney -- Ian Smith for Defendants John T. Mitchell

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
8/26/2003	HRSC	THORNE	Hearing Scheduled (Motion to Withdraw 10/10/2003 03:00 PM)
8/27/2003	NOHG	LEITZKE	Notice Of Hearing
9/3/2003	APPL	MARTIN-TOM	Application for Fifth Access
	AFIS	MARTIN-TOM	Affidavit of Susan Weeks in Support of Motion/Application for Fifth Access Order
9/5/2003	HRVC	THORNE	Hearing result for Motion to Withdraw held on 10/10/2003 03:00 PM: Hearing Vacated
	AFFD	GLASS	Affidavit of Douglas Lawrence
	SUBC	GLASS	Substitution Of Counsel Sanuel Eismann
9/9/2003	ORDR	THORNE	Order Granting Request For Fifth Access
9/11/2003	ANSW	PARKER	Answer
9/18/2003	HRSC	THORNE	Hearing Scheduled (Status Conference 12/11/2003 04:00 PM)
	NOTC	THORNE	Notice of Scheduling Conference
	NOTC	HILDRETH	Notice of Fourth Access
	NOTC	HILDRETH	Notice of Fifth Acces
11/4/2003	NOTC	PARKER	Notice of Substitution of Counsel/Samuel Eismann
11/14/2003	NOTD	NORIEGA	Notice Of Deposition of Harold Funk
12/5/2003	NOAP	LEITZKE	Notice Of Appearance (Douglas Lawrence, Pro Se)
	MOTN	LEITZKE	Defendant Lawrence's Motion Requesting the Court Enter an Order in Limine Against Plaintiff Which is Pertinent to the Unanswered and Incomplete Discovery
	MNCL	LEITZKE	Defendant Lawrence's Motion To Compel Plaintiff to Answer Defendant Lawrence's First Interrogatories and Request for Production of Documents
12/11/2003	HRHD	THORNE	Hearing result for Status Conference held on 12/11/2003 04:00 PM: Hearing Held
12/12/2003	HRSC	THORNE	Hearing Scheduled (Court Trial Scheduled 08/09/2004 09:00 AM)
	NOTC	THORNE	Notice of Trial Setting
12/16/2003	ORDR	THORNE	Order For Mediation
12/18/2003	NOAP	DRAPER	Notice Of Appearance/ Brenda Lawrence Pro Se
1/28/2004	HRSC	THORNE	Hearing Scheduled (Motion for Summary Judgment 04/06/2004 04:00 PM)
2/26/2004	NTSV	NORIEGA	Notice Of Service
3/9/2004	AFFD	VICTORIN	Affidavit of Susan Weeks in Support of Motion for Summary Judgment

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
3/9/2004	AFFD	VICTORIN	Affidavit of John Rook in Support of Motion for Summary Judgment
	AFFD	VICTORIN	Affidavit of Harold Funk in Support of Motion for Summary Judgment
	MEMO	VICTORIN	Memorandum in Support of Motion for Summary Judgment
	MNSJ	VICTORIN	Motion For Summary Judgment
	NOHG	VICTORIN	Notice Of Hearing
3/16/2004	HRSC	THORNE	Hearing Scheduled (Motion 04/14/2004 08:30 AM)
	HRSC	THORNE	Hearing Scheduled (Motion to Compel 04/29/2004 03:00 PM)
	HRVC	THORNE	Hearing result for Motion for Summary Judgment held on 04/06/2004 04:00 PM: Hearing Vacated
3/17/2004	MOTN	SWIGART	Motion For Extension of Time to Answer discovery
	FILE	DRAPER	New File Created ***** File 2 of 2 *****
3/22/2004	NOHG	DRAPER	Notice Of Hearing
3/23/2004	MNCL	NORIEGA	Defendant Douglas Lawrence's Motion To Compel Plaintiff Capstar to Answer Defendant Douglas Lawrence's First Interrogatories and Request for Production of Documents
	MOTN	NORIEGA	Defendants Lawrences' Motion Requesting the Court Enter an Order in Limine Against Plaintiff Capstar Which is Pertinent to the Unanswered Discovery
	AFFD	NORIEGA	Affidavit of Douglas Lawrence in Support of Defendants Douglas Lawrence's Motion to Compel Plaintiff Capstar to Answer Defendant Lawrence's First Interrogatories and First Request for Production of Documents
	MISC	NORIEGA	Defendants Lawrences Reply In Opposition to Plaintiff's Motion for Summary Judgment
	AFFD	NORIEGA	Affidavit of Douglas Lawrence in Support of Defendants Lawrences' Reply in Opposition to Plaintiffs Motion for Summary Judgment
	MISC	NORIEGA	Defendant Douglas Lawrence's First Set of Requests for Admissions to Plaintiff Capstar
	AFFD	NAYLOR	Affidavit of John W Mack in Support of Defendants Lawrences' Reply in Opposition to Plaintiffs Motion for Summary Judgment
3/24/2004	NOHG	ROBINSON	Notice Of Hearing

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
3/31/2004	MOTN	SWIGART	Defendants Lawrences' Motion To Vacate the April 14th Hearing on Plaintiff's Motion for Summary Judgement and To Request a Continuance to Review Plaintiff's Answers to Defendants Discovery and To Take the Deposition of Harold Fund and Others	John T. Mitchell
	NTSD	SWIGART	Notice Of Service Of Discovery	John T. Mitchell
4/6/2004	AFFD	NORIEGA	Affidavit of Kelvin Brownsberger	John T. Mitchell
	AFFD	NORIEGA	Affidavit of Susan Weeks in Opposition to Lawrence's Motion to Vacate the April 14, 2004 Summary Judgment Hearing	John T. Mitchell
	MOTN	NORIEGA	Motion to Strike	John T. Mitchell
	MOTN	NORIEGA	Motion for Protective Order and Limitation of Discovery	John T. Mitchell
	MISC	NORIEGA	Reply Brief in Support of Plaintiff's Motion for Summary Judgment	John T. Mitchell
	MISC	NORIEGA	Brief in Support of Motion for Protective Order and Limitation of Discovery	John T. Mitchell
4/14/2004	HRHD	THORNE	Hearing result for Motion for Summary Judgment held on 04/14/2004 08:30 AM: Hearing Held	John T. Mitchell
4/16/2004	MOTN	VICTORIN	Motion for Final Entry of Judgment	John T. Mitchell
	NOHG	VICTORIN	Notice Of Hearing	John T. Mitchell
4/22/2004	HRSC	THORNE	Hearing Scheduled (Motion to Reconsider 05/20/2004 10:00 AM)	John T. Mitchell
	MOTN	VICTORIN	Defendants Lawrences' Motion for Reconsideration of the Court's Partial Summary Judgment of April 14, 2004	John T. Mitchell
	NOHG	VICTORIN	Notice Of Hearing	John T. Mitchell
4/28/2004	MOTN	LEITZKE	Motion to Shorten Time	John T. Mitchell
	NOHG	LEITZKE	Notice Of Hearing	John T. Mitchell
4/29/2004	INHD	RICKARD	Hearing result for Motion to Compel held on 04/29/2004 03:00 PM: Interim Hearing Held	John T. Mitchell
5/20/2004	HRVC	THORNE	Hearing result for Motion to Reconsider held on 05/20/2004 10:00 AM: Hearing Vacated	John T. Mitchell
7/27/2004	HRVC	THORNE	Hearing result for Court Trial Scheduled held on 08/09/2004 09:00 AM: Hearing Vacated	John T. Mitchell
1/24/2005	NOPD	MEYER	Notice Of Proposed Dismissal Issued	John T. Mitchell
2/10/2005	NOAP	JANUSCH	Notice Of Appearance-John Whalen for Douglas Lawrence	John T. Mitchell
	AFFD	JANUSCH	Affidavit of Retention of John Whelan	John T. Mitchell
	AFFD	JANUSCH	Affidavit of Retention	John T. Mitchell

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
6/7/2005	CVDI	VICTORIN	Civil Disposition entered for: Capstar Radio Operating Company, Plaintiff; Lawrence, Brenda J, Defendant; Lawrence, Douglas P, Defendant. order date: 06/07/2005
	FJDE	VICTORIN	Order Granting Motion for Summary Judgment and Entering Decree of Quiet Title
	STAT	DUBE	Case status changed: closed pending clerk action. Closed in District Court. Appeal filed 7/7/05 and Bond Posted.
7/7/2005		VICTORIN	Filing: T - Civil Appeals To The Supreme Court Paid by: John Whelan Receipt number: 0658477 Dated: 07/07/2005 Amount: \$9.00 (Check)
	BNDC	VICTORIN	Bond Posted - Cash (Receipt 658478 Dated 07/07/2005 for 100.00)
7/8/2005	APSC	VICTORIN	Appealed To The Supreme Court
	MISC	VICTORIN	Clerk's Certificate of Appeal
8/10/2005	NLTR	MCCOY	Notice of Lodging Transcript
9/8/2005	MISC	MO'REILLY	Receipt For Records
9/20/2005	BNDC	MCCOY	Bond Posted - Cash (Receipt 667855 Dated 09/20/2005 for 24.80)
	MISC	JREYNOLDS	Receipt for Records
10/6/2005	BNDV	MCCOY	Bond Converted (Transaction number 9489841 dated 10/06/2005 amount 24.80)
	BNDV	MCCOY	Bond Converted (Transaction number 9489842 dated 10/06/2005 amount 100.00)
5/3/2006	BNDE	MCCOY	Cash Bond Exonerated (Amount 1,000.00)
1/31/2007	FILE	VICTORIN	*****File #3 Created*****
2/1/2007	ORDR	PARKER	Supreme Court Opinion
3/30/2007	REMT	JANUSCH	Remittitur
4/20/2007	HRSC	CLAUSEN	Hearing Scheduled (Pre-Trial Conference 05/14/2007 03:00 PM) Set W/ CV03-4621
	STAT	CLAUSEN	Case status changed: Reopened
		CLAUSEN	Notice of Hearing
5/1/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 06/13/2007 03:00 PM) set W/ CV03-4621 - Weeks
5/14/2007	MEMO	VICTORIN	Memorandum in Support of Renewed Motion for Summary Judgment
	NOHG	VICTORIN	Notice Of Hearing
	MISC	REMPFER	Renewed motion for summary judgment
	HRHD	CLAUSEN	Hearing result for Pre-Trial Conference held on 05/14/2007 03:00 PM: Hearing Held Set W/ CV03-4621

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
5/14/2007	HRSC	CLAUSEN	Hearing Scheduled (Court Trial Scheduled 12/10/2007 09:00 AM) 4 Days
5/16/2007		CLAUSEN	Notice of Hearing
5/29/2007	ANHR	VICTORIN	Amended Notice Of Hearing
5/31/2007	MOTN	HULL	Motion for Enlargement
	AFFD	HULL	Affidavit of John Mack in Support of Defendants' Motion for Enlargement
	AFFD	HULL	Affidavit of Douglas Lawrence
	AFFD	HULL	Affidavit of John P. Whelan
	NOHG	LEPIRE	Notice Of Hearing
6/5/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/13/2007 03:00 PM) Enlargement of Time; Shorten Time and Disqualification for Cause - Whelan
6/6/2007	MEMO	VICTORIN	Reply Memorandum in Support of Renewed Motion for Summary Judgment
	AFFD	VICTORIN	Affidavit of John Whelan
	APPL	VICTORIN	Application for Order Shortening Time
	MNDQ	VICTORIN	Motion To Disqualify
6/7/2007	MOTN	VICTORIN	Motion to Strike Portions of Affidavit of Douglas Lawrence Filed 5-30-07 & Notice of Hearing
	MOTN	HULL	Motion to Strike Portions of Affidavit of John Mack Filed 5/30/07
	NOTH	MCCORD	Notice Of Hearing
	NOTH	MCCORD	Notice Of Hearing
6/8/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/13/2007 03:00 PM) Set W/CV03-4621 - Weeks - Strike Affd John Mack & Portion Affd Doug Lawrence
6/13/2007	ORDR	CLAUSEN	Order Shortening Time
	HRVC	CLAUSEN	Hearing result for Motion held on 06/13/2007 03:00 PM: Hearing Vacated Set W/CV03-4621 - Weeks - Strike Affd John Mack & Portion Affd Doug Lawrence
	HRHD	CLAUSEN	Hearing result for Motion for Summary Judgment held on 06/13/2007 03:00 PM: Hearing Held set W/CV03-4621 - Weeks
	HRHD	CLAUSEN	Hearing result for Motion held on 06/13/2007 03:00 PM: Hearing Held Enlargement of Time; Shorten Time and Disqualification for Cause - Whelan
6/25/2007	ORDR	CLAUSEN	Memorandum Decision and Order Denying Motion for Disqualification for Cause

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
6/26/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 08/07/2007 04:00 PM) Weeks - Set w/CR03-4621
7/9/2007	MOTN	VICTORIN	Motion for Reconsideration
	MOTN	VICTORIN	Motion for Permission to Appeal from an Interlocutory Order
	AFFD	VICTORIN	Affidavit of John P Whelan
7/10/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion to Reconsider 08/06/2007 01:30 PM) Whelan - set W/CR03-4621
	HRSC	CLAUSEN	Hearing Scheduled (Motion 08/06/2007 01:30 PM) Permission to Appeal - Whelan
	NOHG	MCCOY	Notice Of Hearing
	NOHG	MCCOY	AMENDED Notice Of Hearing
7/23/2007	AFFD	MCCOY	Supplemental Affidavit of John P. Whelan
	MEMS	MCCOY	Memorandum In Support Of Motion for Reconsideration
	FILE	VICTORIN	*****File #4 Created*****
7/24/2007	MISC	CLAUSEN	Amended Supplemental Affidavit of John P. Whelan
	AFFD	HULL	Amended Supplemental Affidavit of John P. Whelan (with Exhibit Attached)
	MISC	MCCOY	Opposition of Douglas and Brenda Lawrence to Motion for Summary Judgment of Plaintiff
	MISC	MCCOY	Request for Judicial Notice
	MOTN	MCCOY	Motion for Enlargement
	MOTN	MCCOY	Motion to Strike
	NOHG	MCCOY	Notice Of Hearing
	AFFD	MCCOY	Affidavit of Douglas Lawrence in Support of Opposition to Summary Judgment
	FILE	NAYLOR	New File Created--File 5 of 5 *****EXPANDO***** containing Certificates of Exhibits dated March 23,2004
7/26/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 08/07/2007 04:00 PM) Enlargement of Time; Strike & Request for Judicial Notice - Whelan
7/30/2007	MISC	MCCORD	plaintiff's opposition to def's motion for reconsideration
7/31/2007	MISC	HUFFMAN	Plaintiff's Motion to Strike or in the Alternative for Enlargement of Time to File Responses
	FILE	JANUSCH	New File Created ***6*****
8/2/2007	MOTN	PARKER	Motion to Strike Portions of Affidavit of Douglas Lawrence filed July 24, 2007

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
8/2/2007	AFFD	PARKER	Affidavit of Weeks in Support of Motion to Strike Lawrence Testimony	John T. Mitchell
	MOTN	PARKER	Motion to Shorten Time	John T. Mitchell
	MISC	PARKER	Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment	John T. Mitchell
	NOTH	PARKER	Notice Of Hearing	John T. Mitchell
8/6/2007	DENY	CLAUSEN	Hearing result for Motion to Reconsider held on 08/06/2007 01:30 PM: Motion Denied Whelan - set W/CR03-4621	John T. Mitchell
	DENY	CLAUSEN	Hearing result for Motion held on 08/06/2007 01:30 PM: Motion Denied Permission to Appeal - Whelan	John T. Mitchell
8/7/2007	ORDR	CLAUSEN	Order Denying Defendants' Motion to Reconsider and Motion for Permissive Appeal	John T. Mitchell
	CONT	CLAUSEN	Hearing result for Motion for Summary Judgment held on 08/07/2007 04:00 PM: Continued Weeks - Set w/CR03-4621	John T. Mitchell
	HELD	CLAUSEN	Hearing result for Motion held on 08/07/2007 04:00 PM: Motion Held Enlargement of Time; Strike & Request for Judicial Notice - Whelan	John T. Mitchell
8/8/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 09/24/2007 04:00 PM) 1 hour	John T. Mitchell
		CLAUSEN	Notice of Hearing	John T. Mitchell
8/16/2007	MOTN	MCCORD	plaintiff's Motion for protective order re. def's notice of deposition	John T. Mitchell
	OBJT	MCCORD	Objection to notice of deposition & demand for production of documents	John T. Mitchell
	NOTC	BARKER	Notice Of Delivery Of Original Transcript	John T. Mitchell
8/20/2007	MISC	HUFFMAN	Amended Notice of Deposition and Demand for Production of Documents	John T. Mitchell
8/21/2007	MISC	MCCOY	Subpoena Duces Tecum	John T. Mitchell
	NOTC	MCCOY	Notice of Deposition and Demand for Production of Documents	John T. Mitchell
	NOTC	MCCOY	AMENDED Notice of Deposition and Demand for Production of Documents	John T. Mitchell
9/10/2007	MOTN	VICTORIN	Motion for Leave to File Amended Answer	John T. Mitchell
	AFFD	VICTORIN	Affidavit of John Whelan in Suppoer of Defendants' Opposition to Plaintiff's Renewed Motion for Summary Judgment and in Support of Defendants' Motion for Leave to Amend Answer	John T. Mitchell
	AFFD	VICTORIN	Affidavit of Douglas Lawrence in Suppoer of Opposition to Renewed Motion for Summary Judgment	John T. Mitchell

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
9/10/2007	MISC	VICTORIN	Opposition of Douglas and Brenda Lawrence to Motion for Summary Judgment of Plaintiff	John T. Mitchell
	NOHG	VICTORIN	Notice Of Hearing	John T. Mitchell
9/11/2007	ORDR	CLAUSEN	Order Denying Defendants' Motion for Reconsideration	John T. Mitchell
	ORDR	CLAUSEN	Order Granting Defendants' Motion for Enlargement and Granting Continuance of Summary Judgment	John T. Mitchell
	ORDR	CLAUSEN	Order Granting Defendants' Request for Judicial Notice of the Court Files	John T. Mitchell
	ORDR	CLAUSEN	Order on Defendants' Motion to Strike	John T. Mitchell
9/12/2007	NOTR	GBROWN	Notice Of Transcript Delivery of Harold Funk	John T. Mitchell
9/17/2007	MOTN	PARKER	Motion to Strike Portions of Affidavit of Doug Lawrence filed September 10, 2007	John T. Mitchell
	MISC	PARKER	Plaintiff's Supplemental Reply Memorandum in Support of Motion for Summary Judgment	John T. Mitchell
	MOTN	PARKER	Motion to Shorten Time	John T. Mitchell
	NOTH	PARKER	Notice Of Hearing	John T. Mitchell
	FILE	VICTORIN	*****File #7 Created*****	John T. Mitchell
9/18/2007	ORDR	CLAUSEN	Order on Plaintiff's Motion to Strike Defendants' Pleadings or in the Alternative for Enlargement of Time	John T. Mitchell
	ORDR	CLAUSEN	Order on Plaintiff's Motion to Strike Portions of Affidavit of Douglas Lawrence Filed July 24, 2007	John T. Mitchell
9/21/2007	MOTN	GBROWN	Motion	John T. Mitchell
	MOTN	GBROWN	Motion	John T. Mitchell
9/24/2007	MOTN	HUFFMAN	Motion to Correct Judgment	John T. Mitchell
	MOTN	HUFFMAN	Motion to Shorten Time	John T. Mitchell
	HRHD	CLAUSEN	Hearing result for Motion for Summary Judgment held on 09/24/2007 04:00 PM: Hearing Held 1 hour	John T. Mitchell
9/26/2007	ORDR	CLAUSEN	Order on Motion for Leave to Amend Answer	John T. Mitchell
10/11/2007	NTSV	GBROWN	Notice Of Service of Discovery	John T. Mitchell
10/25/2007	NOTR	GBROWN	Notice Of Transcript Delivery for Kosta Panidis and Kent Abendroth	John T. Mitchell
10/26/2007	NTSV	HUFFMAN	Notice Of Service	John T. Mitchell
10/29/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 10/31/2007 04:00 PM) Allow Access - Weeks	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion 10/31/2007 04:00 PM) Shorten Time - Weeks	John T. Mitchell
	APPL	CLAUSEN	Application for Sixth Access	John T. Mitchell
	MOTN	CLAUSEN	Motion to Shorten Time	John T. Mitchell

Case: CV-2002-0007671 Current Judge: Steve Verby
 Capstar Radio Operating Company vs. Douglas P Lawrence, etal.

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
10/29/2007	NOTH	CLAUSEN	Notice Of Hearing on Sixth Access	John T. Mitchell
	NOTH	CLAUSEN	Notice Of Hearing of Hearing on Motion to Shorten Time	John T. Mitchell
10/31/2007	GRNT	CLAUSEN	Hearing result for Motion held on 10/31/2007 04:00 PM: Motion Granted Shorten Time - Weeks	John T. Mitchell
	GRNT	CLAUSEN	Hearing result for Motion held on 10/31/2007 04:00 PM: Motion Granted Allow Access - Weeks	John T. Mitchell
	ORDR	CLAUSEN	Order Allowing for Shortened Time in Which to Hear Application	John T. Mitchell
	ORDR	CLAUSEN	Order Granting Request for Sixth Access	John T. Mitchell
11/2/2007	MISC	HUFFMAN	Objection to Form of Order Granting Sixth Access	John T. Mitchell
11/5/2007	NOTC	CLAUSEN	Notice of Delivery of Transcript of Hearing Dated 10/31/07	John T. Mitchell
11/7/2007	MNDQ	VICTORIN	Renewed Motion To Disqualify for Cause	John T. Mitchell
	AFFD	VICTORIN	Affidavit of John Whelan in Support of Renewed Motion for Disqualification	John T. Mitchell
	NOTH	CLAUSEN	Notice Of Hearing - Renewed Motion for DQ	John T. Mitchell
11/8/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 11/27/2007 03:30 PM) Renewed Motion for DQ - Whelan 1/2 hour	John T. Mitchell
	NOTC	CLAUSEN	Notice of Delivery of Original Transcript from Hearing Dated 8/7/07	John T. Mitchell
	NOTC	CLAUSEN	Notice of Delivery of Original transcript from Hearing Dated 6/13/07	John T. Mitchell
	NOHG	LSMITH	Notice Of Hearing	John T. Mitchell
11/13/2007	MOTN	VICTORIN	Renewed Motion for Permission to Appeal from an Interlocutory Order	John T. Mitchell
	NOHG	VICTORIN	Notice Of Hearing	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion to Continue 11/27/2007 03:30 PM) Court Trial - Weeks	John T. Mitchell
	MNCN	VICTORIN	Motion To Continue Trial	John T. Mitchell
	NOTC	VICTORIN	Notice of Change of Address	John T. Mitchell
	NOHG	VICTORIN	Notice Of Hearing	John T. Mitchell
	NTSV	HUFFMAN	Notice Of Service Susan P Weeks by Fax 11/12/07	John T. Mitchell
	NTSV	HUFFMAN	Notice Of Service Susan P Weeks 11/13/07	John T. Mitchell
11/14/2007	FILE	JANUSCH	New File Created****7*****	John T. Mitchell
11/15/2007	HRSC	CLAUSEN	Hearing Scheduled (Motion 11/27/2007 03:30 PM) Renewed Motion for Permission to Appeal - Whelan	John T. Mitchell
11/21/2007	MISC	MCCOY	Response to Second Motion to Disqualify	John T. Mitchell

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
11/26/2007	MISC	HUFFMAN	Exhibit List	John T. Mitchell
	MISC	HUFFMAN	Witness List	John T. Mitchell
11/27/2007	DENY	CLAUSEN	Hearing result for Motion held on 11/27/2007 03:30 PM: Motion Denied Renewed Motion for DQ - Whelan 1/2 hour	John T. Mitchell
	HELD	CLAUSEN	Hearing result for Motion held on 11/27/2007 03:30 PM: Motion Held Renewed Motion for Permissive Appeal - Whelan	John T. Mitchell
	GRNT	CLAUSEN	Hearing result for Motion to Continue held on 11/27/2007 03:30 PM: Motion Granted Court Trial - Weeks	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Court Trial Scheduled held on 12/10/2007 09:00 AM: Hearing Vacated 4 Days	John T. Mitchell
11/30/2007	HRSC	CLAUSEN	Hearing Scheduled (Court Trial Scheduled 06/09/2008 09:00 AM) 5 Days	John T. Mitchell
		CLAUSEN	Notice of Hearing	John T. Mitchell
	ORDR	CLAUSEN	Memorandum Decision and Order Denying Defendants' Renewed Motion for Permission to Appeal From an Interlocutory Order	John T. Mitchell
12/3/2007	MISC	SHEDLOCK	Expert Witness Disclosure	John T. Mitchell
12/10/2007	NOTC	CLAUSEN	Notice of Delivery of Original Transcript from 11/27/07	John T. Mitchell
1/4/2008	WITD	BAXLEY	Expert Witness Disclosure of Defendants Douglas and Brenda Lawrence	John T. Mitchell
2/6/2008	ORDR	CLAUSEN	Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Court Trial Scheduled held on 06/09/2008 09:00 AM: Hearing Vacated 5 Days - 1st Priority	John T. Mitchell
2/26/2008	HRSC	CLAUSEN	Hearing Scheduled (Motion 04/23/2008 04:00 PM) Presentment of Judgment	John T. Mitchell
3/19/2008		VICTORIN	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: John Whelan Receipt number: 0787292 Dated: 3/19/2008 Amount: \$15.00 (Check) For: [NONE]	John T. Mitchell
	BNDC	VICTORIN	Bond Posted - Cash (Receipt 787298 Dated 3/19/2008 for 100.00)	John T. Mitchell
	APSC	VICTORIN	Notice of Appeal To The Supreme Court	John T. Mitchell
3/20/2008	NOTE	VICTORIN	Clerk's Certificate of Appeal to Supreme Crt	John T. Mitchell
4/1/2008	ORDR	JANUSCH	Order-Supreme Court	John T. Mitchell
	ORDR	JANUSCH	Order Augmenting Appeal	John T. Mitchell

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
4/9/2008	HRVC	CLAUSEN	Hearing result for Motion held on 04/23/2008 04:00 PM: Hearing Vacated Presentment of Judgment
	APSC	MCCORD	Amended Appealed To The Supreme Court
5/23/2008	NOTC	JANUSCH	Notice of Transcript Lodged-Julie Foland
6/24/2008	ORDR	VICTORIN	Order Granting Motion for Extension of Time to File Clerk's Record
7/29/2008	RECT	RABROWN	Receipt Of Clerk's Transcript on 07/28/08
8/14/2008	BNDV	ROBINSON	Bond Converted (Transaction number 9499657 dated 8/14/2008 amount 100.00)
9/9/2008	ORDR	VICTORIN	Order granting motion to Withdraw as Attorney of Record/John Whelan
1/23/2009		ROBINSON	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Lawrence Douglas Receipt number: 0831372 Dated: 1/23/2009 Amount: \$761.00 (Check)
		ROBINSON	Miscellaneous Payment: Community Service Insurance Fee Paid by: Lawrence Douglas Receipt number: 0831372 Dated: 1/23/2009 Amount: \$.60 (Check)
		ROBINSON	Miscellaneous Payment: Personal Copy Fee Paid by: Lawrence Douglas Receipt number: 0831372 Dated: 1/23/2009 Amount: \$.30 (Check)
	RECT	ROBINSON	Receipt Of Transcript Pd 1-23-2009
1/28/2009	NOTE	VICTORIN	Clerk's Record to Boise
3/6/2009		HUFFMAN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Lawrence Douglas Receipt number: 0837603 Dated: 3/6/2009 Amount: \$761.25 (Cash)
		HUFFMAN	Miscellaneous Payment: Bad Check Fee Paid by: Lawrence Douglas Receipt number: 0837603 Dated: 3/6/2009 Amount: \$20.00 (Cash)
		HUFFMAN	Miscellaneous Payment: Misc Pennies Paid Paid by: Lawrence Douglas Receipt number: 0837603 Dated: 3/6/2009 Amount: \$.65 (Cash)
9/2/2009	REVR	MEYER	Reviewed And Retained
3/1/2010	REVR	MEYER	Reviewed And Retained
8/2/2010	OPIN	RICKARD	Opinion Filed
8/6/2010	NOAP	LEU	Notice Of Appearance-Douglas Lawrence
	NOAP	LEU	Notice Of Appearance-Brenda Lawrence
8/26/2010	MISC	CRUMPACKER	Remittitur
8/27/2010	MISC	CRUMPACKER	Amended Opinion
9/8/2010	HRSC	CLAUSEN	Hearing Scheduled (Motion 11/03/2010 02:30 PM) Entry of Judgment - Lawrence

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
9/8/2010	STAT	CLAUSEN	Case status changed: closed pending clerk action
	AFFD	CLEVELAND	Affidavit of Douglas Lawrence in Support of Motion for Entry of Final Judgment
	MOTN	CLEVELAND	Defendants Lawrences' Motion Requesting the Court Enter a Final Judgment
	NOHG	CLEVELAND	Notice Of Hearing on defendants Motion of Entry of Final Judgement
9/30/2010	ORDR	VICTORIN	Order Granting Plaintiff's Motion for Summary Judgment and Declaring Easement Rights
10/29/2010	HRVC	CLAUSEN	Hearing result for Motion held on 11/03/2010 02:30 PM: Hearing Vacated Entry of Judgment - Lawrence
11/8/2010	NOTE	HAMILTON	No exhibit return notice to go out prior to November 2011
11/10/2010		HUFFMAN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Lawrence, Douglas P (defendant) Receipt number: 0048698 Dated: 11/10/2010 Amount: \$101.00 (Cash) For: Lawrence, Brenda J (defendant) and Lawrence, Douglas P (defendant)
	NOTC	SREED	Notice of Appeal - Douglas & Brenda Lawrence
	APSC	SREED	Appealed To The Supreme Court
	STAT	SREED	Case status changed: Reopened
12/3/2010	ORDR	SREED	AMENDED Order Granting Plaintiff's Motion for Summary Judgment and Declaring Easement Rights
12/16/2010	FILE	CRUMPACKER	*****New File Created #8*****
12/17/2010	ORDR	CLEVELAND	Order Augmenting Appeal
2/15/2011	CERT	CRUMPACKER	Clerks Certificate Of Service
4/4/2011	CERT	CRUMPACKER	Clerks Certificate Of Service
7/25/2011	STAT	ROHRBACH	Case status changed: closed
9/15/2011	CVDI	VIGIL	Civil Disposition entered for: Lawrence, Brenda J, Defendant; Lawrence, Douglas P, Defendant; Capstar Radio Operating Company, Plaintiff. Filing date: 9/15/2011
	FJDE	VIGIL	Judgment and Decree
9/19/2011	ORDR	VIGIL	Order Suspending Appeal and Order Directing the District Court to Enter Final Judgment or, in the Alternative, to Show Cause (SUPREME COURT ORDER)

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
1/25/2012	CVDI	LEU	Civil Disposition entered for: Lawrence, Brenda J, Defendant; Lawrence, Douglas P, Defendant; Capstar Radio Operating Company, Plaintiff. Filing date: 1/25/2012
	FJDE	LEU	Amended Judgment And Decree
5/31/2012	OPIN	VIGIL	Opinion Filed
6/6/2012	ORDR	CLAUSEN	Order of Self Disqualification - Judge John T. Mitchell
	DISF	CLAUSEN	Disqualification Of Judge Mitchell - Self
		CLAUSEN	Order Assigning Judge On Voluntary Disqualification - Lansing L. Haynes
6/8/2012	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 08/01/2012 03:30 PM)
	STAT	SVERDSTEN	Case status changed: Closed pending clerk action
		SVERDSTEN	Notice of Hearing
6/14/2012	HRSC	SVERDSTEN	Hearing Scheduled (Preliminary Injunction 07/09/2012 03:30 PM) Def
	MOTN	BAXLEY	Defendants' Motion For A Preliminary Injunction Against Plaintiff
7/2/2012	MEMO	CRUMPACKER	Memorandum in Opposition to Motion for Preliminary Injunction
7/9/2012	DCHH	SVERDSTEN	Hearing result for Preliminary Injunction scheduled on 07/09/2012 03:30 PM: District Court Hearing Held Court Reporter: AMY WILKINS Number of Transcript Pages for this hearing estimated: Def
7/13/2012	ORDR	MCCOY	Order Re: Lawrences' Motion for a Preliminary Injunction - DENIED
7/26/2012	HRVC	SVERDSTEN	Hearing result for Status Conference scheduled on 08/01/2012 03:30 PM: Hearing Vacated
		SVERDSTEN	Notice Vacating Hearing
8/13/2012	REMT	LEU	Remittitur
8/14/2012	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 08/21/2012 03:30 PM)
	STAT	SVERDSTEN	Case status changed: Reopened
		SVERDSTEN	Notice of Hearing
8/20/2012	NOAP	HUFFMAN	Notice Of Appearance-Douglas Marfice obo Defendants

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
8/21/2012	DCHH	SVERDSTEN	Hearing result for Status Conference scheduled on 08/21/2012 03:30 PM: District Court Hearing Held Court Reporter: ANNE NUNEMACHER Number of Transcript Pages for this hearing estimated:
	HRSC	SVERDSTEN	Hearing Scheduled (Court Trial Scheduled 03/18/2013 09:00 AM) 5 DAYS
		SVERDSTEN	Notice of Trial
10/19/2012	DFWL	CRUMPACKER	Defendant's Expert Witness Disclosure
10/29/2012	NTSV	BAXLEY	Notice Of Service
11/5/2012	MOTN	ZOOK	Motion for Rule 54(b) Certification of Final Judgment on Order Awarding Costs
	AFFD	ZOOK	Affidavit of Theron J. De Smet in Support of Motion for Rule 54(b) Certificate
11/6/2012	STIP	ZOOK	Stipulation for Issuance of AMENDED pre-trial Order
11/13/2012	ORDR	ZOOK	Order
11/21/2012	STIP	MCCOY	Stipulation for Rule 54(b) Certification of Final Judgment on Order Awarding Costs
11/27/2012	CVDI	DEGLMAN	Civil Disposition entered for: Lawrence, Brenda J, Defendant; Lawrence, Douglas P, Defendant; Capstar Radio Operating Company, Plaintiff. Filing date: 11/27/2012
	FJDE	DEGLMAN	Rule 54 (b) Certificate
12/13/2012	NTSV	CRUMPACKER	Notice Of Service of Plaintiffs Answer to Defendants 1st (sic)(Second)Set of Interrogatories Requests for Production and Request for Admissions to Plaintiff
1/8/2013	HRSC	SVERDSTEN	Hearing Scheduled (Motion 02/11/2013 10:30 AM) Motion to Consolidate, Marfice
1/11/2013	NTSD	BAXLEY	Notice Of Service Of Discovery Requests
1/15/2013	NTSV	CRUMPACKER	Notice Of Service of Plaintiffs Capstars 2nd Request for Production of Documents to Defendants
1/28/2013	NOHG	CRUMPACKER	Notice Of Hearing
	MNAM	CRUMPACKER	Motion To Amend Answer Motion to Substitute Real Party in Interest & Motion to Consolidate
	MEMS	CRUMPACKER	Memorandum In Support Of Motion to Amend Answer Motion to Substitute Real Party in Interest & Motion to Consolidate
	AFFD	CRUMPACKER	Affidavit of Theron J Desmet in Support of Motion to Amend Anser Motion to Substitute Real Party in Interest & Motion to Consolidate

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
2/4/2013	MEMO	CRUMPACKER	Plaintiffs Memorandum in Opposition to Defendants Motion to Amend Motion to Substitute Real Party in Interest & Motion to Consolidate
2/11/2013	DCHH	SVERDSTEN	Hearing result for Motion scheduled on 02/11/2013 10:30 AM: District Court Hearing Hel Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Motion to Consolidate Motion to Amend, Marfice
	HRVC	SVERDSTEN	Hearing result for Court Trial Scheduled scheduled on 03/18/2013 09:00 AM: Hearing Vacated 5 DAYS
	HRSC	SVERDSTEN	Hearing Scheduled (Court Trial Scheduled 04/15/2013 09:00 AM) 5 DAYS
	HRSC	SVERDSTEN	Hearing Scheduled (Pre-Trial Conference 03/21/2013 03:30 PM)
		SVERDSTEN	AMENDED Notice of Trial
		SVERDSTEN	Notice of Hearing
	NTSV	CRUMPACKER	Notice Of Service of Plaintiffs Answers & Responses to Defendants 3rd Set of Interrogatories & Requests for Production of Documents to Plaintiff
	FILE	MITCHELL	New File Created #9
2/12/2013	HRSC	SVERDSTEN	Hearing Scheduled (Motion 03/11/2013 01:30 PM) Motion to Serve Add'l Discovery, Desmet
2/14/2013	NTSD	CRUMPACKER	Notice Of Service Of Discovery Responses
2/20/2013	HRVC	SVERDSTEN	Hearing result for Motion scheduled on 03/11/2013 01:30 PM: Hearing Vacated Motion to Serve Add'l Discovery, Desmet
2/22/2013	ORDR	DEGLMAN	Order Re: Defendants' Motion to Amend, Motion to substitute Real Party in Interest and Motion to Consolidate for Trial Purposes Only
3/6/2013	HRSC	SVERDSTEN	Hearing Scheduled (Motion in Limine 03/21/2013 03:30 PM) Weeks
3/7/2013	MNLI	CRUMPACKER	Plaintiffs 1st Motion In Limine
	NOHG	CRUMPACKER	Notice Of Hearing
3/13/2013	NTSV	CRUMPACKER	Notice Of Service
3/14/2013	MISC	CLEVELAND	Defendants' Opposition to Plaintiff's Motion in Limine
3/18/2013	HRVC	SVERDSTEN	Hearing result for Court Trial Scheduled scheduled on 04/15/2013 09:00 AM: Hearing Vacated 5 DAYS
	HRVC	SVERDSTEN	Hearing result for Motion in Limine scheduled on 03/21/2013 03:30 PM: Hearing Vacated Weeks

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
3/18/2013	HRVC	SVERDSTEN	Hearing result for Pre-Trial Conference scheduled on 03/21/2013 03:30 PM: Hearing Vacated	Lansing L. Haynes
	MISC	CRUMPACKER	Plaintiffs Reply in Support of First Motion in Limine	Lansing L. Haynes
	AFFD	CRUMPACKER	Affidavit of John W Mack in Support of Defendants Lawrences' Reply in Opposition to Plaintiffs Motion for Summary Judgment	Lansing L. Haynes
3/20/2013	ADMR	SVERDSTEN	Administrative assignment of Judge Verby	John T. Mitchell
		SVERDSTEN	Order Assigning District Judge Verby	John T. Mitchell
5/8/2013	HRSC	HOFFMAN	Hearing Scheduled (Pre-Trial Conference 05/16/2013 10:00 AM) To Be Held In Kootenai County	Steve Verby
	HRSC	HOFFMAN	Hearing Scheduled (Jury Trial Scheduled 06/11/2013 09:00 AM) To Be Held In Kootenai County	Steve Verby
		HOFFMAN	Notice of Pretrial Conference/Trial	Steve Verby
		HOFFMAN	Notice of Pretrial Conference/Trial	Steve Verby
5/14/2013	HRSC	BIELEC	Hearing Scheduled (Motion 05/16/2013 10:00 AM) Motion to Quash - Ed Holms	Steve Verby
	SUBF	MITCHELL	Subpoena Return/found - E.H. - Witness and mileage fees demanded but not tendered at time of service 5/14/13 E.H.	Steve Verby
	AFFD	MITCHELL	Affidavit of Edwin B. Holmes in Support of Motion to Quash	Steve Verby
	MOTN	MITCHELL	Motion to Quash Subpoena	Steve Verby
	MOTN	MITCHELL	Motion to Shorten Time for Hearing	Steve Verby
	NOTH	MITCHELL	Notice Of Hearing on Motion to Quash and Shorten Time	Steve Verby
5/16/2013	DCHH	BIELEC	Hearing result for Motion scheduled on 05/16/2013 10:00 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Under 100 pages Motion to Quash - Ed Holms -----WITHDRAWN-----	Steve Verby
	DCHH	BIELEC	Hearing result for Pre-Trial Conference scheduled on 05/16/2013 10:00 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Under 100 pages To Be Held In Kootenai County	Steve Verby
	MEMO	MCKEON	Plaintiff's Memorandum Of Law Regarding Determination Of Equitable And Legal Issues	Steve Verby

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
5/16/2013	HRVC	HOFFMAN	Hearing result for Jury Trial Scheduled scheduled on 06/11/2013 09:00 AM: Hearing Vacated To Be Held In Kootenai County - 8 days
5/17/2013	HRSC	HOFFMAN	Hearing Scheduled (Court Trial Scheduled 06/11/2013 09:00 AM) To Be Held In Kootenai County - 6/11-6/20 8 days
		HOFFMAN	Notice of Trial
5/21/2013	SDTI	CRUMPACKER	Subpoena Duces Tecum Issued KCTC
5/30/2013	PLTX	CRUMPACKER	First Amended List Of Exhibits
	PLWL	CRUMPACKER	First Amended Consolidated Witness List
	DFWL	CRUMPACKER	Trial Witness List(Consolidated)
	DEFX	CRUMPACKER	Trial Exhibit List(Consolidated)
6/1/2013	FILE	LEU	New File Created-----CREATED-----#10
6/3/2013	AFSV	LEU	Affidavit Of Service-J.C.-5/15/13
	AFSV	LEU	Affidavit Of Service-J.K.-5/16/13
	AFSV	LEU	Affidavit Of Service-K.B.-5/16/13
	AFSV	LEU	Affidavit Of Service-C.K.-5/16/13
	AFSV	LEU	Affidavit Of Service-W.M-5/17/13
	AFSV	LEU	Affidavit Of Service-J.R.-5/18/13
	AFSV	LEU	Affidavit Of Service-T.L.-5/18/13
	AFSV	LEU	Affidavit Of Service-B.R.-5/18/13
	AFSV	LEU	Affidavit Of Service-B.P.-5/19/13
	AFSV	LEU	Affidavit Of Service-K.B.-5/19/13
	AFSV	LEU	Affidavit Of Service-J.M.-5/20/13
	AFSV	LEU	Affidavit Of Service-W.W.-5/21/13
	AFSV	LEU	Affidavit Of Service-A.f.-5/15/13
	AFSV	LEU	Affidavit Of Service-E.J-5/14/13
	AFSV	LEU	Affidavit Of Service-R.K.-5/31/13
	AFSV	LEU	Affidavit Of Service-M.K.-6/1/13
	AFSV	LEU	Affidavit Of Service-J.B.-5/14/13
	AFSV	LEU	Affidavit Of Service-J.M.-5/14/13
6/4/2013	SUBI	CRUMPACKER	Subpoena Issued RSH
	SUBI	CRUMPACKER	Subpoena Issued JR
	MISC	LEU	Supplement Trial Withness List
	BRIE	LEU	Defendants' Trial Brief
	MISC	LEU	Consolidated Proposed Findings Of Fact And Conclusions Of Law
	BRIE	LEU	Consolidated Trail Brief

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User		Judge
6/4/2013	SUBI	CRUMPACKER	Subpoena Issued BA	Steve Verby
	MISC	LEU	Defendants' Proposed Findings Of Fact And Conclusions Of Law	Steve Verby
6/5/2013	AFSV	LEU	Affidavit Of Service-B.A.-6/4/13	Steve Verby
	AFSV	LEU	Affidavit Of Service-J.R.-6/4/13	Steve Verby
	AFSV	LEU	Affidavit Of Service-R.H.-6/4/13	Steve Verby
6/7/2013	PLTX	BAXLEY	SECOND AMENDED Exhibit List (Plaintiff's)	Steve Verby
	DEFX	BAXLEY	Defendants' Supplemental Trial Exhibit List	Steve Verby
6/10/2013	SUBI	BAXLEY	Subpoena Issued to DB	Steve Verby
	MISC	BAXLEY	Plaintiffs' Designation Of Kent Abendroth's, Wayne Funk's And Jim Van Sky's Deposition Testimony	Steve Verby
	ORDR	LEU	Pretrial Order	Steve Verby
6/11/2013	DCHH	BIELEC	Hearing result for Court Trial Scheduled scheduled on 06/11/2013 09:00 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: To Be Held In Kootenai County - 6/11-6/20 8 days	Steve Verby
6/18/2013	BRIE	BAXLEY	Plaintiffs' Supplemental Consolidated Trial Brief	Steve Verby
	NOTR	BAXLEY	Notice Of Transcript Delivery - Deponent JR	Steve Verby
8/20/2013	MISC	BIELEC	*****FILE 11 EXPANDO CREATED ***** DF Exhibits	Steve Verby
	MISC	BIELEC	*****FILE 12 EXPANDO CREATED***** PL Exhibits	Steve Verby
9/10/2013	MEMO	LEU	Memorandum Decision And Order	Steve Verby
9/25/2013	NOTC	CRUMPACKER	Notice of compliance	Steve Verby
3/24/2014	NOTE	MEYER	File referred to Civil Dept. to call for Final Judgment for signature according to the Memo & Decision. - see Note 3/24/14	Steve Verby
	NOTE	MITCHELL	Called Atty. Susan Weeks re: Final Judgment--Per Susan - She will send another e-mail on Friday 3/28 to the Marfice office. Attorneys have not agreed upon an order.	Steve Verby
5/5/2014	HRSC	HOFFMAN	Hearing Scheduled (Motion 05/22/2014 09:00 AM) Presentment of Judgment	Steve Verby
		HOFFMAN	Notice of Hearing	Steve Verby

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
5/22/2014	DCHH	PEUKERT	Hearing result for Motion scheduled on 05/22/2014 09:00 AM: District Court Hearing Held Court Reporter: Byrl Cinnamon Number of Transcript Pages for this hearing estimated: Less than 100 pages
	CVDI	DIXON	Civil Disposition entered for: Lawrence, Brenda J, Steve Verby Defendant; Lawrence, Douglas P, Defendant; Capstar Radio Operating Company, Plaintiff. Filing date: 5/22/2014
	FJDE	DIXON	Final Judgment And Decree Of Quiet Title And Permanent Injunction
	STAT	DIXON	Case status changed: Closed
5/27/2014	MOTN	DEGLMAN	Motion For Leave to Withdraw
	AFIS	DEGLMAN	Affidavit of Douglas S Marfice in Support of Motion For Withdrawal
	NOHG	DEGLMAN	Notice Of Hearing
6/3/2014	FILE	JLEIGH	*****NEW FILE CREATED***** #13
6/4/2014	MOTN	JLEIGH	Motion For Reconsideration
	MEMO	JLEIGH	Memorandum In Support Of Motion For Reconsideration
6/5/2014	HRSC	PEUKERT	Hearing Scheduled (Motion to Withdraw 06/26/2014 10:00 AM) Marfice motion - 1 hour
	STAT	PEUKERT	Case status changed: Closed pending clerk action
6/6/2014	NOHG	DEGLMAN	Notice Of Hearing
	MEMO	DEGLMAN	Memorandum of Costs
	MEMS	DEGLMAN	Memorandum In Support Of Motion For Enlargement of Time Re: Memorandum of Costs
	MOTN	DEGLMAN	Motion For Enlargement of Time to File Memorandum of Costs
6/26/2014	DCHH	LUCKEY	Hearing result for Motion to Withdraw scheduled on 06/26/2014 10:00 AM: District Court Hearing Held Court Reporter: Byrl Cinnamon Number of Transcript Pages for this hearing estimated: Under 100 Pages
	ORDR	LEU	Order Granting Leave To Withdraw At Attorney
6/27/2014	RTSV	DIXON	Proof Of Service-6/26/14-DL and BJL by certified mail
7/1/2014		HUFFMAN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: W Jeremy Carr obo Douglas Lawrence Receipt number: 0027810 Dated: 7/1/2014 Amount: \$129.00 (Check) For: Lawrence, Brenda J (defendant) and Lawrence, Douglas P (defendant)

Capstar Radio Operating Company vs. Douglas P Lawrence, Brenda J Lawrence

Date	Code	User	Judge
7/1/2014	BNDC	HUFFMAN	Bond Posted - Cash (Receipt 27811 Dated 7/1/2014 for 100.00)
	BNDC	HUFFMAN	Bond Posted - Cash (Receipt 27812 Dated 7/1/2014 for 3500.00)
	NOTC	HUFFMAN	Notice of Appeal
7/3/2014	NOTC	HUFFMAN	Notice of Substitution of Counsel
7/9/2014	NOTC	HUFFMAN	Amended Notice of Appeal
7/11/2014	CERT	HUFFMAN	Certificate Of Mailing - Clerk's Certificate 7012 2920 0001 8385 4851
7/23/2014	RTCT	CLEVELAND	Return Certificate - 7/21/14 - ISC
8/11/2014	HRSC	PEUKERT	Hearing Scheduled (Motion 09/04/2014 10:00 AM) DF MOTION FOR RECONSIDERATION
		PEUKERT	Notice of Hearing
9/3/2014	MOTN	JLEIGH	Plaintiff's Motion For Enlargement Of Time and To Shorten To Respond To Respond To Defendants' Motion To REconsider And Motion To Shorten Time To Hear Enlargement
	MEMO	JLEIGH	Plaintiff's Memorandum In Response To Defendants' Motion To Reconsider
	MEMS	JLEIGH	Plaintiff's Memorandum In Support Of Motion For Enlargement Of Time To Respond To Defendants' Motion To Reconsider
	NOTH	JLEIGH	Notice Of Hearing On Plaintiff's Motion For Enlargement Of Time To Respond To Defendants' Motion To Reconsider And Motion To Shorten Time To Hear Enlargement
9/4/2014	DCHH	MORGAN	Hearing result for Motion scheduled on 09/04/2014 10:00 AM: District Court Hearing Hel Court Reporter: Keri Veare DF MOTION FOR RECONSIDERATION TELEPHONNIC CALL (208) 743-9516
11/10/2014	MEMO	MCCOY	Memorandum Decision and Order Re: 1) Motion for Enlargement of Time and 2) Motion for Reconsideration
2/5/2015	ORDR	HUFFMAN	Supreme Court Order Augmenting Appeal With Prior Appeal Nos 32090,35120 and 38300
2/17/2015	FJDE	LEU	Amended Final Judgment
3/3/2015	MCAF	LUNNEN	Memorandum Of Costs
3/16/2015	MISC	HUFFMAN	Objection to Memorandum of Costs
4/9/2015	HRSC	BOOTH	Hearing Scheduled (Motion 05/19/2015 03:00 PM) fees and costs
	BNDC	HUFFMAN	Bond Posted - Cash (Receipt 13583 Dated 4/9/2015 for 39.10)
	NLTR	HUFFMAN	Notice of Lodging Transcript

SUSAN P. WEEKS, ISB #4255
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

Telephone: (208) 667-0683
Facsimile: (208) 664-1684

Attorneys for Plaintiff

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 9/30/10
AT 5:00 O'CLOCK P.M.
CLERK, DISTRICT COURT
Cathy Victoria DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DECLARING EASEMENT
RIGHTS**

This matter came before the court on Plaintiff's Renewed Motion for Summary Judgment on November 27, 2007. The Court having heard the argument of counsel, being fully advised in the premises, and having issued its Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
FOLLOWS:

1. Plaintiff's Motion is Granted and the court hereby declares that Plaintiff has an ingress and egress easement by prescription; an easement implied by prior use and an easement by necessity across Lawrences' parcel of property located in Section 21, Township 51 North,

Range 5 West, which easement is more particularly described in Exhibit "A" attached hereto and incorporated herein.

2. That the Defendants are permanently restrained from interfering with Plaintiff and Plaintiff's tenants use of Blossom Mountain Road for ingress and egress to its site.

DATED this 30th day of September 2005.


JOHN T. MITCHELL
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of Oct, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:



U.S. Mail



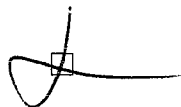
Telecopy (FAX)

#470

Douglas P. and Brenda J. Lawrence
P.O. Box 1027
Coeur d'Alene, ID 83814

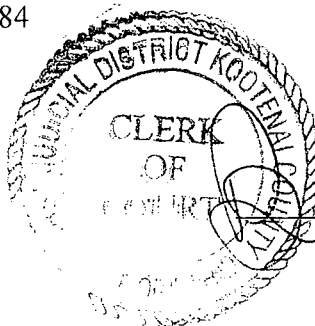


U.S. Mail

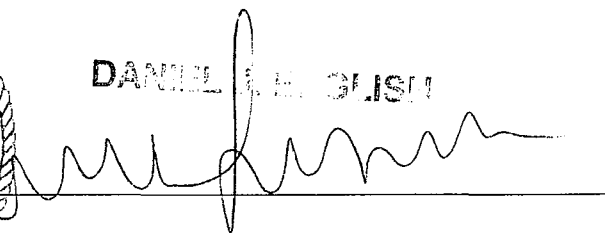


Telecopy (FAX)

Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
Fax: (208) 664-1684



DANIEL E. GLISII



BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at the Southeast corner of Section 21, monumented by a 2 1/2" Zinc cap, thence westerly along the south line of said section, South 89°27'43" West, 602.57 feet to the centerline of Apple Blossom Mountain Road and the POINT OF BEGINNING.

thence continuing along said section line South 89°27'43" West, 15.03 feet to the North right-of-way of Apple Blossom road,

thence leaving said section line and continuing along the said North right-of-way the following courses and distances;

thence 255.30 feet along a curve to the right, having a radius of 750.23 feet, and a long chord that bears North 12°42'32" East, 254.07 feet;
thence North 18°35'46" East, 164.80 feet;
thence North 26°21'12" East, 43.85 feet;
thence 157.70 feet along a curve to the right, having a radius of 90.06 feet, and a long chord that bears North 79°21'30" East, 138.32 feet;
thence South 50°55'04" East, 163.40 feet;
thence South 58°42'22" East, 163.84 feet;
thence South 61°12'45" East, 54.65 feet;
thence South 64°56'20" East, 41.65 feet to the East line of Section 21;

thence leaving said right-of-way along said Section line South 00°19'03" East, 33.20 feet to the South right-of-way of Apple Blossom Road;

thence continuing along said right-of-way the following courses and distance;

thence North 64°56'20" West, 56.86 feet;
thence North 61°12'45" West, 56.28 feet;
thence North 58°42'22" West, 166.54 feet;
thence North 50°55'03" West, 165.66 feet;
thence 104.52 feet along a curve to the left having a radius of 60.06 feet and a long chord which bears South 79°41'04" West, 91.82 feet;
thence South 26°21'12" West, 40.99 feet;
thence South 18°35'46" West, 163.79 feet;

EXHIBIT A



Engineers Surveyors Planners

thence 244.25 feet along a curve to the left, having a radius of 720.23 feet, and a long chord that bears South $12^{\circ}49'18''$ West, 243.09 feet to the South line of Section 21;

thence leaving said right-of-way Westerly along said Section line South $89^{\circ}27'43''$ West, 15.03 feet to the POINT OF BEGINNING.

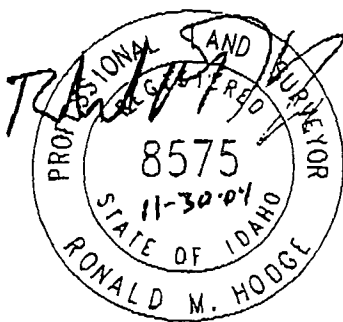
Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:

J-U-B ENGINEERS, Inc.

Ronald M. Hodge, P.L.S.



RMH/DLC

F:\Projects\20-04-087 Weeks-Blossum Mtn/Blossum_KLJ_easement.doc



SUSAN P. WEEKS, ISB #4255
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

Telephone: (208) 667-0683
Facsimile: (208) 664-1684

Attorneys for Plaintiff

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 12-3-10
AT 1:30 O'CLOCK P. M.
[Signature]
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

AMENDED

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DECLARING EASEMENT
RIGHTS**

This matter came before the court on Plaintiff's Renewed Motion for Summary Judgment on November 27, 2007. The Court having heard the argument of counsel, being fully advised in the premises, and having issued its Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment

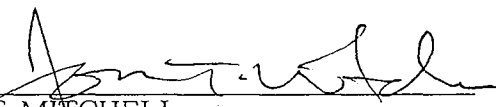
NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
FOLLOWS:

1. Plaintiff's Motion is Granted and the court hereby declares that Plaintiff has an ingress and egress easement by prescription; an easement implied by prior use and an easement by necessity across Lawrences' parcel of property located in Section 21, Township 51 North,

Range 5 West, which easement is more particularly described in Exhibit "A" attached hereto and incorporated herein.

2. That the Defendants are permanently restrained from interfering with Plaintiff and Plaintiff's tenants use of Blossom Mountain Road for ingress and egress to its site.

DATED this 30th day of September, 2010, (December 3, 2010, none
Pro tunc to
September 30, 2010)


JOHN T. MITCHELL
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of Oct, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:



U.S. Mail



Telecopy (FAX)

670

Douglas P. and Brenda J. Lawrence
P.O. Box 1027
Coeur d'Alene, ID 83814

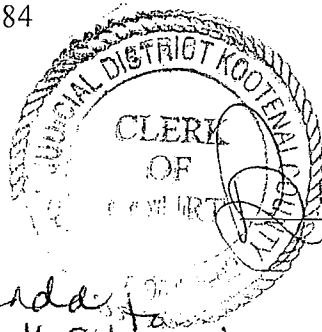


U.S. Mail

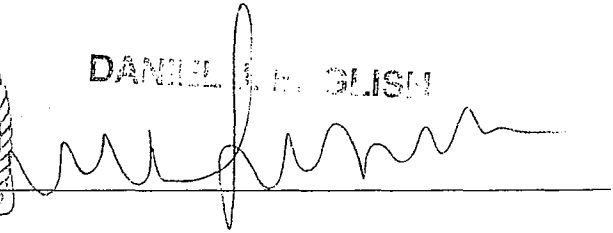


Telecopy (FAX)

Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
Fax: (208) 664-1684



DANIEL E. GLISH



*faxed Amanda
Weeks-664-1684; Lawrence Mtd.*

BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at the Southeast corner of Section 21, monumented by a 2 1/2" Zinc cap, thence westerly along the south line of said section, South 89°27'43" West, 602.57 feet to the centerline of Apple Blossom Mountain Road and the POINT OF BEGINNING.

thence continuing along said section line South 89°27'43" West, 15.03 feet to the North right-of-way of Apple Blossom road,

thence leaving said section line and continuing along the said North right-of-way the following courses and distances;

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thence South 61°12'45" East, 54.65 feet;
thence South 64°56'20" East, 41.65 feet to the East line of Section 21;

thence leaving said right-of-way along said Section line South 00°19'03" East, 33.20 feet to the South right-of-way of Apple Blossom Road;

thence continuing along said right-of-way the following courses and distance;

thence North 64°56'20" West, 56.86 feet;
thence North 61°12'45" West, 56.28 feet;
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thence South 26°21'12" West, 40.99 feet;
thence South 18°35'46" West, 163.79 feet;

EXHIBIT A



Engineers Surveyors Planners

thence 244.25 feet along a curve to the left, having a radius of 720.23 feet, and a long chord that bears South 12°49'18" West, 243.09 feet to the South line of Section 21;

thence leaving said right-of-way Westerly along said Section line South 89°27'43" West, 15.03 feet to the POINT OF BEGINNING.

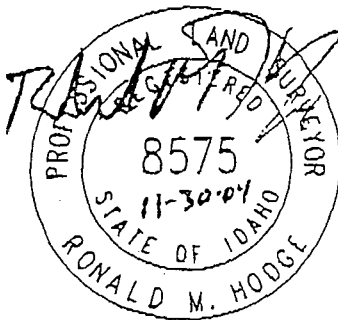
Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:

J-U-B ENGINEERS, Inc.

Ronald M. Hodge, P.L.S.



RMH/DLC
F:\Projects\20-04-087 Weeks-Blossum Mtn\Blossum_KU_easement.doc



In the Supreme Court of the State of Idaho

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss

2010 DEC 17 PM 1:43

CLERK DISTRICT COURT

DEPUTY

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff-Respondent,

v.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants-Appellants.

ORDER AUGMENTING APPEAL

Supreme Court Docket No. 38300-2010
Kootenai County Docket No. 2002-7671

A Clerk's Record and Reporter's Transcript was filed February 2, 2009, in appeal No. 35120, Capstar v. Lawrence; therefore, good cause appearing,

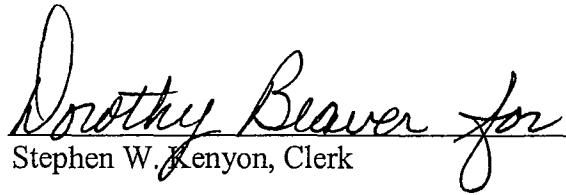
IT HEREBY IS ORDERED that the Appeal Record in this case shall be AUGMENTED to include the Reporter's Transcript and Clerk's Record filed in prior appeal No. 35120.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in the Notice of Appeal, together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 35120.

IT FURTHER IS ORDERED that the District Court Reporter shall prepare and lodge a SUPPLEMENTAL REPORTER'S TRANSCRIPT with the District Court, which shall contain the proceedings requested in the Notice of Appeal, but shall not duplicate any proceedings included in the Reporter's Transcript filed in prior appeal No. 35120. The LIMITED CLERK'S RECORD and REPORTER'S TRANSCRIPT shall be filed with this Court after settlement. Further, the exhibits submitted in prior appeal No. 35120, are not covered by this Order and they will not be sent to the Supreme Court unless specifically requested by the parties. The party requesting any or all of the prior exhibits must specifically designate those exhibits being requested.

DATED this 8th day of December 2010.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

P.O. Box 83720
Boise, Idaho 83720-0101

DANIEL J. ENGLISH, CLERK
Attn: TODD IN CIVIL
KOOTENAI COUNTY COURTHOUSE
PO BOX 9000 DC
COEUR D ALENE, ID 83816-9000

NOTICE OF APPEAL FILED (C)

Docket No. 38300-2010	CAPSTAR RADIO	Kootenai County District Court
	OPERATING COMPANY v.	#2002-7671
	DOUGLAS P. LAWRENCE	

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on NOVEMBER 26, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD must be filed in this office on or before FEBRUARY 9, 2010.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

12/08/2010 DB

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

P.O. Box 83720
Boise, Idaho 83720-0101

DANIEL J. ENGLISH, CLERK
Attn: TODD IN CIVIL
KOOTENAI COUNTY COURTHOUSE
PO BOX 9000 DC
COEUR D ALENE, ID 83816-9000

CLERK'S CERTIFICATE FILED

Docket No. 38300-2010.

CAPSTAR RADIO
OPERATING
COMPANY v.
DOUGLAS P.
LAWRENCE

Kootenai County District Court
#2002-7671

Enclosed is a copy of the CLERK'S CERTIFICATE for the above-entitled appeal, which was filed in this office on NOVEMBER 26, 2010.

Please carefully examine the TITLE and the CERTIFICATE and advise the District Court Clerk (or the Agency secretary, if applicable) AND this office of any errors detected on this document.

The TITLE in the CERTIFICATE must appear on all DOCUMENTS filed in this Court, including all BRIEFS. An abbreviated version of the TITLE may be used if it clearly identifies the parties to this appeal when the title is extremely long.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

12/08/2010 DB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware Corporation,

Plaintiff/Respondent,

vs.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Appellants.

Assigned Court No. 38300

CIVIL CASE NO.
CV 02-7671

CLERK'S CERTIFICATE
OF APPEAL

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS
2011 NOV 26 A 8:45

Appeal from: First Judicial District, Kootenai County

Honorable: JOHN T. MITCHELL, Presiding

Case Number from Court: CV-02-7671

Orders or Judgments appealed from: 1. MEMORANDUM DECISION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, dated February 6, 2008;
2. ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND DECLARING
EASEMENT RIGHTS

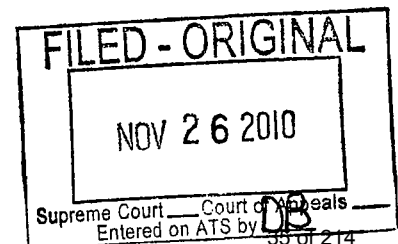
Attorney for Plaintiff: Susan P. Weeks

Attorney for Appellants: Pro Se

Appealed by: Defendants

Appealed against: Plaintiff

Notice of Appeal Filing Date: November 10, 2010



Amended Notice of Appeal Filing Date: N/A

Notice of Cross-Appeal Filed: N/A

Appellant Fee Paid: Yes

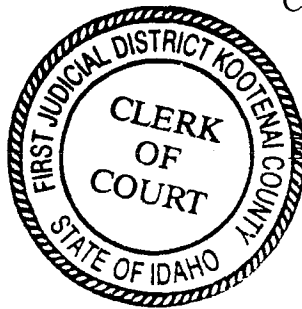
Request for Additional (Clerk's) (Agency's) Filed: No

Name of Court Reporter: Julie Foland

Was Reporter's Transcript Requested? Yes

Dated: November 23, 2010

DANIEL J. ENGLISH
Clerk of District Court



Susan Reed
Deputy

SUSAN P. WEEKS, ISB #4255
 JAMES, VERNON & WEEKS, P.A.
 1626 Lincoln Way
 Coeur d'Alene, ID 83814

Telephone: (208) 667-0683
 Facsimile: (208) 664-1684

Attorneys for Plaintiff

STATE OF IDAHO } ss
 COUNTY OF KOOTENAI }
 FILED: 9/15/11
 AT 10:00 O'CLOCK M
 CLERK, DISTRICT COURT
Michael Viger
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
 a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
 LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

JUDGMENT AND DECREE

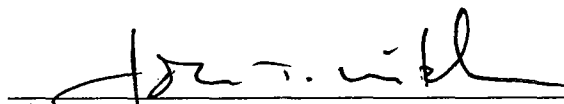
The Court having previously issued its opinion and orders in the above matter, and
 pursuant to Rule 54(a), I.R.C.P., final judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Motion ^{for Summary Judgment and Declaring Easement Rights was} is Granted and the court hereby declares that Plaintiff has an
^{on September 30, 2010,}
 ingress and egress easement by prescription; an easement implied by prior use and an easement
 by necessity across Lawrences' parcel of property located in Section 21, Township 51 North,
 Range 5 West, which easement is more particularly described in Exhibit "A" attached hereto and
 incorporated herein.

2. That the Defendants are permanently restrained from interfering with Plaintiff and Plaintiff's tenants use of Blossom Mountain Road for ingress and egress to its site.

DATED this 15th day of September, 2005.


JOHN T. MITCHELL
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of Sept., 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:



U.S. Mail



Telecopy (FAX)

Douglas P. and Brenda J. Lawrence
P.O. Box 1027
Coeur d'Alene, ID 83814



U.S. Mail

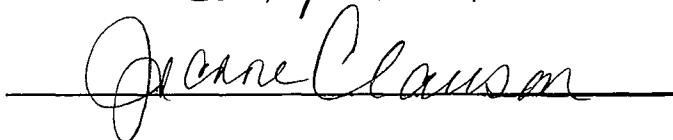


Telecopy (FAX)

Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
Fax: (208) 664-1684

Intabro Super court ATTN: Stephen Kenyon, 334-2616
Cathy Darden

#1859



Nov. 5. 2010 9:49AM

EDLANDER HAYNES MITCHELL PETE

No. 6092 P. 4/5

BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

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thence South 18°35'46" West, 163.79 feet;

Nov. 5. 2010 9:49AM EDLANDER HAYNES MITCHELL PETE No. 6092 P. 5/5

JUB

Engineers Surveyors Planners

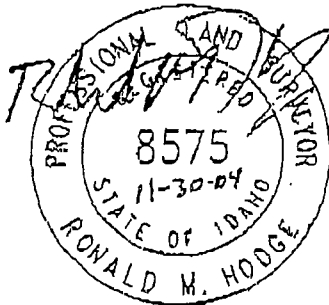
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Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:
J-U-B ENGINEERS, Inc.
Ronald M. Hodge, P.L.S



2011 APR -4 PM 1:39

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK DISTRICT COURT
Barbara Crumpton
DEPUTY *RE*

CAPSTAR RADIO OPERATING)
COMPANY a Delaware Corporation,)

CASE NO.
CV 2002-7671

Plaintiff / Respondent,)
VS.)

DOUGLAS P. LAWRENCE and)
BRENDA J. LAWRENCE, husband)
Aand wife,)

Defendants / Appellate,)
_____)

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I picked up a copy of the Clerk's record on Appeal

Susan Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814

Christie Elmore for Susan Weeks
4/4/11

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the
said Court this 4 day of ~~February, 2010.~~
April 2011

Clifford T. Hayes
Clerk of the District Court

by: *Susan Reed*

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED:

2011 FEB 15 PM 4:38

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK DISTRICT COURT

Paul C. Crum
DEPUTY

CAPSTAR RADIO OPERATING
COMPANY a Delaware Corporation,

CASE NO.
CV 2002-7671

Plaintiff / Respondent,
VS.

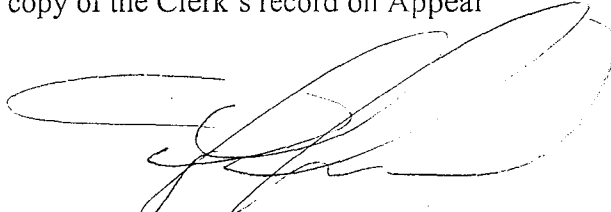
DOUGLAS P. LAWRENCE and
BRENDA J. LAWRENCE, husband
Aand wife,

Defendants / Appellate,

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I picked up a copy of the Clerk's record on Appeal

Douglas Lawrence
PO Box 1027
Coeur d'Alene, ID 83816



IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the
said Court this 15 day of February, 2010.

Clifford T. Hayes
Clerk of the District Court

by: *Clifford T. Hayes*

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED

CLERK DISTRICT COURT

Alfred V. S. J.
DEPUTY

Supreme Court Docket No. 38300-2010
Kootenai County Docket No. 2002-7671

which effectively resolves the controversy between the parties as a "Judgment" or "Decree," effectively depriving Appellants of their ability to obtain appellate review of the decisions of the district court;

NOW THEREFORE IT IS ORDERED, pursuant to the authority granted the Idaho Supreme Court by Article V, § 2 of the Idaho Constitution, that the Hon. John T. Mitchell, District Judge of the First Judicial District of the State of Idaho, shall, within seven (7) days of the date of this Order, either enter a judgment complying, in all respects, with the requirements of Idaho Rule of Civil Procedure 54(a) in Kootenai County Case No. CV 02-7671, or alternatively, SHOW CAUSE why this Court should not enter forthwith its Order compelling him to enter a judgment complying, in all respects, with the requirements of Idaho Rule of Civil Procedure 54(a).

DATED this 14th day of September, 2011.

By Order of the Supreme Court



Stephen W. Kenyon, Clerk

cc: Douglas P. Lawrence, pro se appellant
Brenda J. Lawrence, pro se appellant
Counsel of Record
District Court Clerk
District Judge John T. Mitchell

ORDER SUSPENDING APPEAL AND ORDER DIRECTING THE DISTRICT COURT TO
ENTER FINAL JUDGMENT OR, IN THE ALTERNATIVE, TO SHOW CAUSE – Docket No.
38300-2010

SUSAN P. WEEKS, ISB #4255
 JAMES, VERNON & WEEKS, P.A.
 1626 Lincoln Way
 Coeur d'Alene, ID 83814

Telephone: (208) 667-0683
 Facsimile: (208) 664-1684

Attorneys for Plaintiff

STATE OF IDAHO } ss
 COUNTY OF KOOTENAI
 FILED: 1/25/12
 AT 4:20 O'CLOCK P.M.
 CLERK, DISTRICT COURT
[Signature] DEPUTY
deb.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
 a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
 LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671 *JTW* 1/25/12
AMENDED
 JUDGMENT AND DECREE

The Court having previously issued its opinion and orders in the above matter, and
 pursuant to Rule 54(a), I.R.C.P., final judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Motion ^{for Summary Judgment and Declaring Easement Rights was} is Granted and the court hereby declares that Plaintiff has an
^{on September 30, 2010,}
 ingress and egress easement by prescription; an easement implied by prior use and an easement
 by necessity across Lawrences' parcel of property located in Section 21, Township 51 North,
 Range 5 West, which easement is more particularly described in Exhibit "A" attached hereto and
 incorporated herein.

2. That the Defendants are permanently restrained from interfering with Plaintiff and Plaintiff's tenants use of Blossom Mountain Road for ingress and egress to its site.

DATED this 15th day of September, ~~2005~~ 2012

*for 1/25/2012
None possible
to September 15, 2012*


JOHN T. MITCHELL
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of Jan., 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:



U.S. Mail



Telecopy (FAX)

Douglas P. and Brenda J. Lawrence
P.O. Box 1027
Coeur d'Alene, ID 83814



U.S. Mail



Telecopy (FAX)

Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
Fax: (208) 664-1684

*Intabo Super Court ATTN: Stephen Kenyon, 334-2616
Cathy Dorden*

*#1859
#3717*

Jane Clauson

No. 5. 2010 9:49AM

EDLANDER HAYNES MITCHELL PETE

No. 6092 P. 4/5

BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at the Southeast corner of Section 21, monumented by a 2 1/2" Zinc cap, thence westerly along the south line of said section, South 89°27'43" West, 602.57 feet to the centerline of Apple Blossom Mountain Road and the POINT OF BEGINNING.

thence continuing along said section line South 89°27'43" West, 15.03 feet to the North right-of-way of Apple Blossom road;

thence leaving said section line and continuing along the said North right-of-way the following courses and distances;

thence 255.30 feet along a curve to the right, having a radius of 750.23 feet, and a long chord that bears North 12°42'32" East, 254.07 feet;

thence North 18°35'46" East, 164.80 feet;

thence North 26°21'12" East, 43.85 feet;

thence 157.70 feet along a curve to the right, having a radius of 90.06 feet, and a long chord that bears North 79°21'30" East, 138.32 feet;

thence South 50°55'04" East, 163.40 feet;

thence South 58°42'22" East, 163.84 feet;

thence South 61°12'45" East, 54.65 feet;

thence South 64°56'20" East, 41.65 feet to the East line of Section 21;

thence leaving said right-of-way along said Section line South 00°19'03" East, 33.20 feet to the South right-of-way of Apple Blossom Road;

thence continuing along said right-of-way the following courses and distance:

thence North 64°56'20" West, 56.86 feet;

thence North 61°12'45" West, 56.28 feet;

thence North 58°42'22" West, 166.54 feet;

thence North 50°55'03" West, 165.66 feet;

thence 104.52 feet along a curve to the left having a radius of 60.06 feet and a long chord which bears South 79°41'04" West, 91.82 feet;

thence South 26°21'12" West, 40.99 feet;

thence South 18°35'46" West, 163.79 feet;

Nov. 5, 2010 9:49AM EDLANDER HAYNES MITCHELL PETE No. 6092 P. 6/5

J-U-B

Engineers Surveyors Planners

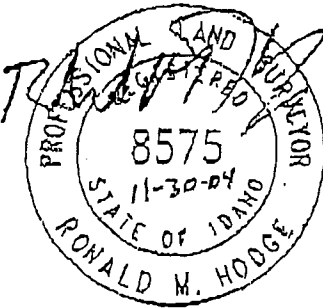
thence 244.25 feet along a curve to the left, having a radius of 720.23 feet, and a long chord that bears South 12°49'18" West, 243.09 feet to the South line of Section 21;

thence leaving said right-of-way Westerly along said Section line South 89°27'43" West, 15.03 feet to the POINT OF BEGINNING.

Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:
J-U-B ENGINEERS, Inc.
Ronald M. Hodge, P.L.S



IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 38300

116
STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2012 MAY 31 AM 11:38

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff-Respondent,

v.

DOUGLAS P. LAWRENCE and BRENDA
J. LAWRENCE, husband and wife,

Defendants-Appellants.

)
) **Coeur d'Alene, April 2012 Term**
)
) **2012 Opinion No. 80**
)
) **Filed: May 29, 2012**
)
) **Stephen W. Kenyon, Clerk**
)
) **CN 2002-7671**
)
)

Appeal from the district court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

The order of the district court granting summary judgment is reversed and this case is remanded for trial on remaining easement theories. The district court's decision denying the Motion for Disqualification is affirmed and the district court's ruling that appellants' defenses of laches and statute of limitations were without merit is affirmed. No attorney's fees on appeal are awarded and costs on appeal are awarded to appellants.

Douglas Lawrence and Brenda Lawrence, Coeur d'Alene, appellants *pro se*.

James, Vernon & Weeks, Coeur d'Alene, for respondents. Susan P. Weeks argued.

W. JONES, Justice

I. NATURE OF THE CASE

This appeal involves a dispute over whether Capstar Radio Operating Company, ("Capstar"), holds an easement over the property of Douglas and Brenda Lawrence. Capstar filed a Motion for Summary Judgment, alleging in the alternative, that an easement existed based on the theory of either an easement by implication, an easement by necessity, or a prescriptive easement. The district court filed its Order granting summary judgment, finding that Capstar holds an easement implied by prior use, an easement by prescription, and an easement by necessity. The Lawrences appealed to this Court, arguing that the district court erred in granting

summary judgment because genuine issues of material fact exist. The Lawrences also argue that the district court abused its discretion by failing to recuse itself for alleged bias, and that the lower court erred in determining that the Lawrences' defenses of laches and statute of limitations were meritless.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Appellants, Douglas and Brenda Lawrence, and the Respondent, Capstar, own parcels of property on Blossom Mountain, which is located south of Post Falls, Idaho. The Lawrence parcel is located in the southeast quarter of Section 21, and the Capstar parcel is located just to the east of the Lawrence parcel in the southwest quarter of Section 22. Section 21 lies directly west of Section 22. At one time, both the Lawrence parcel and the Capstar parcel were part of a larger tract of land owned in unity by Harold and Marlene Funk, referred to herein as the "Funk parcel." The Funks purchased the Funk parcel in 1969 which consisted of parts of land in Section 15, Section 21, and Section 22.

In 1966, the General Telephone Company, (the "GTC"), obtained an easement to access its acre of land in Section 22 (not the Capstar parcel) over a private road owned by Wilber Mead that crossed the southwest quarter of Section 21 (Mead's property), then moved south and entered the north half of Section 28¹ where it then turned northeast and entered the southeast quarter of Section 21 (over the Lawrence parcel) and into the southwest quarter of Section 22 (near the Capstar parcel). Mead included a condition that the GTC was to erect and maintain a locked gate on the property. Harold Funk testified that when he and his wife purchased the Funk parcel, the private easement road that was used by the GTC to access its parcel, was the exclusive means of accessing the Funks' property in the southeast quarter of Section 21 and in the southwest quarter of Section 22. In 1972, Mead granted the Funks an easement over the private road which crossed Mead's property in the southwest quarter of Section 21. There is a dispute about whether Funk used the access road prior to Mead granting the easement. Funk testified that, prior to Mead granting the easement, Mead allowed Funk to drive across his property, but Funk wanted to purchase the easement so that any successors in interest would have the same easement access. However, in his affidavit, Mead testified that "[f]rom the gate's construction until the time I granted Harold Funk an easement in 1972, the [GTC] had the only

¹ Section 28 lies directly south of Section 21. The owner of Section 28 is not a party to this lawsuit.

other key to this gate. To my knowledge, Harold Funk did not use this gate to access his property.”

In 1975, the Funks broke off the Lawrence parcel and sold it to Human Synergistics, Inc., but retained their land in Section 22. The sales agreement to Human Synergistics stated that the “Section 21 parcel was being sold subject to an ingress/egress easement over the existing road on the property that was being sold to Human Synergistics.” The contract was a title retaining contract in which the grant of the Lawrence parcel, and any easement over it, was contingent upon the fulfillment of the sales contract. Human Synergistics paid off the contract in 1992 and the Funks issued a warranty deed conveying title to Human Synergistics on October 29, 1992. Funk testified that after the sale, he and his wife continued to use the private easement road in Section 21 to access their property in Section 22. In 1989, the Funks broke off the Capstar parcel and sold part of their Section 22 property to Kootenai Broadcasting, Inc. John Rook, the owner of Kootenai Broadcasting, testified that at the time of the purchase, the private easement road crossing over Section 21 was the only access to its property in Section 22, now the Capstar parcel.

The respective parcels passed through several other hands before either the Lawrences or Capstar purchased them. The chain of title established for the Lawrence parcel is as follows: Funks to Human Synergistics; Human Synergistics to Johnston & McHugh; Johnston & McHugh to N.A.P.; N.A.P. to Farmanian; Farmanian to the Lawrences. The Lawrences purchased their property in 1996. The chain of title established for the Capstar parcel is as follows: Funks to Kootenai Broadcasting; Kootenai Broadcasting to Rook Broadcasting; Rook Broadcasting to AGM; AGM to Capstar. Capstar purchased its parcel in 2000.

From a public road, known as Signal Point Road, Capstar seeks an easement to access its property over an unimproved private road known as Blossom Mountain Road. Signal Point Road lies to the west of the Lawrence parcel. Blossom Mountain Road crosses through the Lawrence parcel before passing near the Capstar parcel. In 2002, the Lawrences questioned Capstar’s right to access its property over the portion of Blossom Mountain Road that traversed the Lawrences’ property. On November 7, 2002, Capstar filed suit for declaratory and injunctive relief, seeking to have an easement declared based on the following four alternative theories: 1) express easement, 2) easement by implication, 3) easement by necessity, and 4) prescriptive easement. Capstar moved for summary judgment on the four theories and the district court found that Capstar held an express easement over the Lawrence parcel based upon an earlier

contract between two other parties. The lower court did not address Capstar's other easement theories. The Lawrences appealed, and this Court vacated the district court's decision, finding that no express easement over the Lawrences' property was retained by Capstar's predecessor in interest, and remanded the case back to the district court. *Capstar Radio Operating Co., v. Lawrence*, 143 Idaho 704, 708, 152 P.3d 575, 579 (2007).

On remand, Capstar renewed its Motion for Summary Judgment on the remaining theories of easement by implication from prior use, an easement by necessity, and a prescriptive easement. The Lawrences subsequently filed a motion to disqualify District Judge Mitchell for cause. The district judge heard evidence and issued a written decision declining to disqualify himself. On February 6, 2008, the district court issued a Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment, finding that an easement by implication, or in the alternative, that an easement by necessity, or a prescriptive easement existed over the Lawrences' property. The district court also rejected the Lawrences' defense of laches and statute of limitations as meritless. The Lawrences again appealed, but this Court dismissed the appeal for lack of jurisdiction because there was no separate final judgment entered. *Capstar Radio Operating Co. v. Lawrence*, 149 Idaho 623, 625–26, 238 P.3d 223, 225–26 (2010). The Lawrences then moved the lower court to enter a final judgment, and the district court issued a separate Order Granting Plaintiff's Motion for Summary Judgment and Declaring Easement Rights. On November 10, 2010, the Lawrences properly filed their Notice of Appeal to this Court. The district court entered final judgment on September 15, 2011.

III. ISSUES ON APPEAL

1. Whether the district court erred in granting Capstar's Motion for Summary Judgment?
2. Whether the district court abused its discretion by failing to disqualify itself for cause?
3. Whether the district court erred in determining that the Lawrences' defenses of laches and statute of limitations were meritless?
4. Whether the Lawrences are entitled to attorney's fees on appeal?

IV. STANDARD OF REVIEW

On appeal from the grant of a motion for summary judgment, this Court utilizes the same standard of review used by the district court originally ruling on the motion. *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 360, 93 P.3d 685, 691 (2004). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). The facts must be liberally construed

in favor of the non-moving party. *Renzo v. Idaho State Dep't. of Agric.*, 149 Idaho 777, 779, 241 P.3d 950, 952 (2010).

When an action will be tried before a court without a jury, the court may, in ruling on the motions for summary judgment, draw probable inferences arising from the undisputed evidentiary facts. Drawing probable inferences under such circumstances is permissible because the court, as the trier of fact, would be responsible for resolving conflicting inferences at trial. However, if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented, then summary judgment is improper.

Losee v. Idaho Co., 148 Idaho 219, 222, 220 P.3d 575, 578 (2009) (internal citations omitted).

V. ANALYSIS

A. The District Court Erred in Granting Summary Judgment Because Genuine Issues of Material Fact Exist

All the evidence relating to the three easement theories present genuine issues of material fact and these issues were not properly resolved on summary judgment. Summary judgment was not a proper method to dispose of a case with so much conflicting evidence. No request for a jury trial has been made in the case at hand. Although the court, as the trier of fact, may draw the most probable inferences from the undisputed evidence, there are enough genuine issues of material fact to warrant deciding the merits of the case at trial. There is a fine line between drawing the most probable inferences and weighing the evidence, and this Court holds the belief that the district court should have allowed the case to go to trial in order to weigh the conflicting evidence and test the credibility of the witnesses.

1. Easement by Implication

“An easement by implication requires a showing of (1) unity of title and subsequent separation by grant of the dominant estate; (2) apparent continuous use of an access; and (3) reasonable necessity for an easement.” *Bob Daniels & Sons v. Weaver*, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (1984) (citing *Cordwell v. Smith*, 105 Idaho 71, 77, 665 P.2d 1081, 1087 (Ct. App. 1983)). This doctrine presumes that if an access was in use at the time of severance, such use was meant to continue. *Bob Daniels & Sons*, 106 Idaho at 542, 681 P.2d at 1017. Strict necessity is not required to establish an implied easement by prior use. *Davis v. Peacock*, 133 Idaho 637, 642–43, 991 P.2d 362, 367–68 (1999). The party seeking to establish the easement must prove reasonable necessity. *Id.* “Reasonable necessity is something less than the great present necessity required for an easement implied by necessity.” *Id.* at 642, 991 P.2d at 367.

The district court found that Capstar established an easement by implication from prior use. The district court relied on Funk’s affidavit testimony to support its finding that after the

1975 sale to Human Synergistics, the easement road crossing Blossom Mountain was the only existing road to access the Funks' property in Section 22. The court also found apparent and continuous use of the private easement road to access the Funks' property in Section 22 after the sale of the Capstar parcel to Kootenai Broadcasting in 1989.

This Court agrees that Capstar proved the first element because the Funks originally held the Funk parcel, which included the Lawrence parcel and the Capstar parcel, in unity of title and then subsequently severed the unity when the Funks sold the Lawrence parcel to Human Synergistics. A central question, however, is *when* separation occurred; as such a determination is relevant to how the "apparent continuous use" is measured. In 1975, the Funks entered into a sales contract to sell the southeast quarter of Section 21 (the Lawrence parcel) to Human Synergistics, but retained legal title of the Lawrence parcel until Human Synergistics paid off the contract in 1992. The question of whether separation occurs at the time of a sales contract or whether separation occurs at the time legal title passes is a matter of first impression for Idaho courts. The district court and the parties assumed that 1975 (the date of the sales contract) was the relevant date but did not discuss their rationale for doing so. In deciding this question, we find that the district court and the parties were correct and that it is the creation of a possessory interest that creates the necessary separation. In this, we follow the Washington courts that have found that the "substantial rights in the land" created through the real estate contract create the relevant separation. *Bays v. Haven*, 777 P.2d 562, 564 (Wash. Ct. App. 1989). For instance, generally, a "vendee under a real estate contract has the right to possession of the land, the right to dominion and control of the land, and the right to cultivate and harvest the crops grown on the land." *Id.* If implied easements are based on the presupposition that the parties would not have agreed to this transaction except with some tacit understanding that an easement would exist, that presupposition should arise at the time of the contract as that is when the understanding would arise. *See* 25 AM. JUR. 2D *Easements and Licenses* § 24 ("The basis of the general principle as to the implication of an easement from a preexisting use is the presumed or probable intention of the parties to the conveyance as disclosed by all the circumstances surrounding the transaction.") (Footnotes omitted).

However, the record presents genuine issues of material fact regarding whether the Funks' use of the easement road was apparent and continuous and whether it was reasonably necessary to use the Blossom Mountain access road to reach their property in Section 22. The Lawrences submitted evidence through the affidavit of Bruce Anderson, a Kootenai County

surveyor, testifying that Mellick Road, which was made public in 1910, extended into land owned by the Funks in Section 15 when the Funks took title to their land. Capstar argues that Mellick Road did not extend all the way into the Funks' Section 22 property and that it was not constructed or maintained past its entry point in Section 15. In his deposition, Funk also acknowledged the presence of an old logging road that had been in Section 22 (near the Capstar parcel) at the time he first purchased the Funk parcel in 1969. Funk also testified that the logging road was in poor shape and that he "didn't care to" drive along the road. According to Funk's deposition, the "X" marked on the 1959 Metsker map indicates the location where the logging road was accessible and Funk testified that he could not access his property from the logging road without cleaning out the road first. A property owner cannot create a necessity through his or her own actions. *B & J Dev. & Invs., Inc. v. Parsons*, 126 Idaho 504, 507, 887 P.2d 49, 52 (Ct. App. 1994) (citing *Cordwell*, 105 Idaho at 80, 665 P.2d at 1090).

A dispute exists over whether the Funks could have extended the logging road to Mellick Road in order to access the property in Section 22. Capstar argues that it was impossible for the Funks to connect the logging road with Mellick Road because it meets in the northeast quarter of Section 21, which the Funks did not own. However, the Lawrences argue that the Funks could have redirected the logging road to connect with Mellick Road in their Section 15 property, but chose not to do so. The Lawrences proffered evidence that such a task was possible through the affidavit of Mr. Mack, who connected the old logging road to Mellick Road to access his property in Section 22, which surrounds the Capstar parcel. Although this information is relevant, the record does not disclose the costs or difficulty involved with Mack's connection of the two roads. Without more evidence, it remains unclear whether connecting the logging road with Mellick Road would have been a reasonable task for Funk to perform.

Furthermore, the record presents multiple instances in which witnesses have made contradictory statements regarding material facts. For instance, Funk's deposition testimony is inconsistent with his affidavit testimony regarding the location and formation of the GTC access road. Moreover, Funk's affidavit stated "we continuously utilized the existing road in Section 21 to access our property in Section 22 without interference." Yet when deposed, Funk testified that the uses of the property were huckleberry picking and shooting and that this occurred on an infrequent basis, approximately 20 to 30 times. Further, Mead stated that he had no knowledge of Funk's use of the property. The conflicting testimony presents a genuine issue of material fact regarding whether Funk's use of the easement road was apparent and continuous. In cases where

this Court has found apparent continuous use, that finding has been based on use that would have been apparent to the outside world. *Thomas v. Madsen*, 142 Idaho 635, 638, 132 P.3d 392, 395 (2006) (finding use of a driveway apparent); *Akers v. DL White Const., Inc.*, 142 Idaho 293, 302, 127 P.3d 196, 205 (2005) (finding “regular use” to be required); *Davis v. Peacock*, 133 Idaho 637, 641, 991 P.2d 362, 366 (1999) (requiring open and continuous use to “ensure[] that the buyer of the servient property will have notice of the preexisting use”) (abrogated on other grounds by *Spokane Structures, Inc. v. Equitable Inv., LLC*, 148 Idaho 616, 226 P.3d 1263 (2010)). Assuming that Funk’s “continuous” use of the easement road was limited to Funk’s infrequent trips for huckleberry picking and shooting practice, it would not likely constitute apparent continuous use. *Bear Island Water Ass’n, Inc. v. Brown*, 125 Idaho 717, 725, 874 P.2d 528, 536 (1994) (finding no apparent continuous use where a well was drilled but not used before separation); *Close v. Rensink*, 95 Idaho 72, 77–78, 501 P.2d 1383, 1388–89 (1972) (finding use of access roads was limited and diminished further after sale); *see also Cordwell*, 105 Idaho at 78, 665 P.2d at 1088 (holding use by other parties to be insufficient to establish apparent continuous use).

Moreover, Rook’s deposition testimony contradicts his affidavit testimony regarding Rook’s knowledge of Funk’s use of the easement road. Due to medication, Rook could not recall the circumstances surrounding the signing of his affidavit and could not verify its accuracy. In his affidavit, Rook testified that “[t]he existing private access road was visible and in use by Funks at the time Kootenai Broadcasting purchased its parcel.” During his deposition, when asked how he knew that the Funks were using the private easement road to access their property, Rook replied:

The only thing – the only answer to that is that’s what Bill Gott would have told us – whether Funks used it, I don’t know whether Funks had been up on that hill before. I’d never met the man. . . . I’m just assuming that – that’s the only road that I knew about and the road we had to go up for several years in and out of there.

This presented the district court with another evidentiary conflict regarding a material fact of whether Funk’s prior usage of the access road was apparent and continuous over a number of years and whether Rook had adequate knowledge to testify to that matter. *See Baxter v. Craney*, 135 Idaho 166, 172, 16 P.3d 263, 269 (2000) (stating “it is not proper for the trial judge to assess the credibility of an affiant at the summary judgment stage when credibility can be tested in court before the trier of fact.”); *Argyle v. Slemaker*, 107 Idaho 668, 670, 691 P.2d 1283, 1285 (Ct. App. 1984) (holding that even when the court will serve as trier of fact,

credibility determinations “should not be made on summary judgment if credibility can be tested by testimony in court before the trier of fact”). Yet, here, the lower court seems to have weighed the conflicting evidence and judged the affiants’ credibility in making a ruling on summary judgment.

2. *Easement by Necessity*

“An easement by necessity requires (1) unity of ownership prior to division of the tract; (2) necessity of an easement at the time of severance; and (3) great present necessity for the easement.” *Bob Daniels & Sons*, 106 Idaho at 542, 681 P.2d at 1017 (citing *Cordwell*, 105 Idaho at 79, 665 P.2d at 1089). If an alternate access exists, even one which is thought to be expensive or inconvenient, then an easement by necessity must not be granted. *Id.* The district court found that Capstar had proven all the elements of an easement by necessity.

A genuine issue of material fact exists regarding whether it was necessary for the Funks to use the easement road to reach their property in Section 22 when Mellick Road provided legal access to the Funk Parcel in Section 15. The requirements of necessity do not require that there be access to all portions of a parcel or that there be the most convenient access possible. Rather, it simply requires that there be some public access to the parcel. On the record before us, there is an issue of material fact regarding whether the remaining Funk parcel would have retained access via Mellick Road in Section 15. The Lawrences have provided evidence that the portion would still have provided access and, assuming they were successful, such a finding would defeat the required necessity. Nor is it entirely clear how the district court found the easement by necessity over the Lawrences’ land when that easement would not, in fact, lead to a public road. As the Lawrences point out, Capstar did not have the legal right to travel over the road in Section 28 and where “land over which the way of necessity is claimed has no access to a public road,” no necessity can arise. *Rathbun v. Robson*, 661 P.2d 850, 853 (1983). Therefore, the district court erred in determining this issue on summary judgment because the conflicting evidence presented a genuine issue of material fact regarding whether the evidence proved an easement by necessity.

3. *Easement by Prescription*

The trial court’s Memorandum Decision and Order Granting Plaintiff’s Motion for Summary Judgment is riddled with errors, many of which are pointed out in the Lawrences’ briefs and are acknowledged by Capstar. These discrepancies include erroneously spelling the names of material witnesses as well as confusing the legal property descriptions between Section

21 and Section 22. Although most of the district court's errors are harmless, the court made substantial errors in its analysis of whether Capstar established an easement by prescription. Even Capstar admitted that the lower court erred in analyzing the correct period of time to serve as the five year prescriptive period to determine a prescriptive easement. In its brief to this Court, Capstar stated:

Lawrence correctly notes that the trial court made an error in its ruling regarding the prescriptive period as applied to Funk. The trial court correctly noted that in looking at the prescriptive period it was required to examine the six year period following Funk's sale of the Lawrence parcel to Human Synergistics. Funk owned the entire parcel for a six year period from 1969 to 1975. After selling the Lawrence parcel, he personally used the road from 1975 to 1981, another six year period. The trial court discussed the six year prescriptive as being from 1969 to 1975. **It is clear the trial court became confused regarding the years encompassed in the six year prescriptive use period.** The evidence in the record before the trial court was that after moving to Aberdeen in 1975, Funk only visited the property two or three times and stopped visiting after 1981

(Emphasis added).

"In order to establish an easement by prescription, a claimant must prove by clear and convincing evidence use of the subject property that is (1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the owner of the servient tenement (5) for the statutory period of five years." *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006) (quoting *Hoagins v. Sales*, 139 Idaho 225, 229, 76 P.3d 969, 973 (2003)); see I.C. § 5-203.² The lower court analyzed the requisite elements of a prescriptive easement under the wrong period of time. In explaining its reasoning, the district court stated:

Lawrences fail to realize that Funk's use of his property and the use he made of the Lawrence property from 1975 to present is not relevant. The uncontradicted evidence is that Funk used the property consistently for the six year period from the day he sold to Human Synergistics to the day he moved from the area. This is one more year than the five years required for the prescriptive use. . . . The use Capstar seeks is no different than the prescriptive use Funks made of the Lawrences' land for that six year period from 1969 to 1975.

The trial court incorrectly determined that the relevant prescriptive period was from 1969 (the time the Funks purchased the Funk parcel) to 1975 (the time the Funks sold the Lawrence parcel to Human Synergistics). This time period is flawed because the Funks were in actual

² In 2006, Idaho Code section 5-203 was amended to extend the statutory time period from five years to twenty years. However, the twenty year time period does not apply to an easement by prescription acquired prior to the amendment.

possession of the Lawrence parcel during that six year period and a landowner cannot create an easement in his own land. “An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner.” *Hughes*, 142 Idaho at 480, 129 P.3d at 1229 (citing *Hodgins*, 139 Idaho at 229, 76 P.3d at 973). In other words, “an easement is defined as a right in the lands of another, and therefore one cannot have an easement in his own lands.” *Zingiber Inv., L.L.C., v. Hagerman Highway Dist.*, 150 Idaho 675, 681, 249 P.3d 868, 874 (2011) (quoting *Gardner v. Fliegel*, 92 Idaho 767, 771, 450 P.2d 990, 994 (1969)). Capstar argues that the court’s confusion should not invalidate the court’s holding because Funk continuously used the easement road from 1975 to 1981. This Court finds Capstar’s argument to be meritless because it is inconsistent with Idaho’s easement law and it is not supported by the facts.

In 1969, the Funks entered into a sales contract with the Radens to purchase the Funk Parcel consisting of property in Government Lot 3 of Section 15, property in the southeast quarter of Section 21, and property in the southwest quarter of Section 22, except that portion conveyed to the GTC, and took possession of the property. In 1974, the Funks paid off the real estate contract and were given a warranty deed dated April 11, 1974. In 1975, the Funks entered into a sales contract to sell the southeast quarter of Section 21 (the Lawrence parcel) to Human Synergistics, but retained title in the Lawrence parcel until Human Synergistics paid off the contract in 1992. In his deposition, Funk testified that from 1969 to 1975, he made twenty to thirty trips up to Blossom Mountain. In his affidavit, Funk stated that following the 1975 sale of the Lawrence parcel to Human Synergistics, “we continuously utilized the existing road in Section 21 to access our property in Section 22 without interference.” Yet, Funk also testified that he moved to Aberdeen in the fall of 1975 and then made only two or three trips to the mountain over the next five years (the relevant time period to establish a prescriptive easement). Funk further testified that he did not go back to the mountain after 1981. Eight years later, in 1989, Funk sold a portion of his property in Section 22 (the Capstar parcel) to Kootenai Broadcasting.

When analyzing the elements required for a prescriptive easement to exist under the correct time period (1975 until 1980), it is difficult to see how the district court could determine that the Funks’ use of the easement road was continuous and uninterrupted for a period of five years. The Funks continuously used the private access road over the Lawrence parcel from 1969 until the Funks moved to Aberdeen in 1975. During that time frame, the Funks were in

possession of the Lawrence parcel. However, Funk testified that he only used the road two or three times from 1975 to 1981. Such limited use of the road does not constitute open and continuous use. After 1981, the Funks' use of the easement road over the Lawrence parcel was interrupted and unused for eight years, until the time Funk sold the Capstar parcel to Kootenai Broadcasting in 1989.³

This case is highly complex and presents multiple issues of material fact which the lower court should address at trial. The testimony of several material witnesses presented conflicting information and the parties should be cross-examined to determine their credibility. Thus, the district court erred in granting Capstar summary judgment because the case presents multiple issues of material fact that preclude the court from deciding on a motion for summary judgment whether an easement exists.

B. The District Court Did Not Abuse Its Discretion in Denying the Lawrences' Motion for Disqualification for Cause

The Lawrences filed a Motion for Disqualification for Cause, alleging that District Judge Mitchell was biased or prejudiced against them or their case. In accordance with Idaho Rule of Civil Procedure 40(d)(2), the Lawrences filed an affidavit from their attorney of record at the time,⁴ John P. Whelan, stating the grounds for disqualification. The first concern raised by the Lawrences was that Judge Mitchell voluntarily disqualified himself in *Yovichin v. Bush* (CV 2001-2116) in 2001 because of an alleged "personality conflict" with Mr. Whelan, who was counsel for the defense. A copy of the Order for Self Disqualification was attached to Mr. Whelan's affidavit. The Lawrences further argued that the court was prejudiced against Mr. Whelan based on the court's prior rulings in cases where Mr. Whelan was the attorney of record and his clients did not prevail. The Lawrences also asserted that the lower court was biased because Capstar's counsel, Susan Weeks, is a law firm partner with Lee James, who is a friend of

³ Neither has there been a showing of adversity. Idaho courts have applied the notion that "[w]hen one claims an easement by prescription over wild or unenclosed lands of another, mere use of the way for the required time is not generally sufficient to give rise to a presumption that the use is adverse." *Trunnell v. Ward*, 86 Idaho 555, 560, 389 P.2d 221, 224 (1964); accord *Christie v. Scott*, 110 Idaho 829, 831, 718 P.2d 1267, 1269 (Ct. App. 1986). Under such a principle and from the record before this Court, the Lawrences' land appears to qualify as wild and undeveloped lands. Capstar argues that this issue was not raised below and should be deemed waived. We address this issue here because 1) the Lawrences have raised the question of whether any use was permissive and this is part of the legal standard required to show permissiveness and, as such, the issue is fairly encompassed in the question presented to this Court; and 2) because the district court indisputably erred in measuring the prescriptive period from 1969 to 1975, the question of whether the district court's decision should be affirmed must include consideration of the proper legal standard.

⁴ At the time the motion to disqualify was filed on June 6, 2007, John P. Whelan was the attorney of record. Mr. Whelan later withdrew as counsel and the Lawrences are currently pro se litigants.

Judge Mitchell, as well as the former president of the Idaho Trial Lawyers Association.⁵ Lastly, the Lawrences argued that because they appealed to the Idaho Supreme Court and this Court overturned the district court's original grant of summary judgment on the express easement theory, the lower court's bias and prejudice against the Lawrences has increased as a result of the appeal.

On June 13, 2007, the district court held a hearing on the Lawrences' motion to disqualify. In addition to the aforementioned arguments, the Lawrences raised a new issue at the hearing concerning campaign contributions. The Lawrences argued that Susan Weeks' law firm, of which she is a partner, contributed \$1,000 to Judge Mitchell's reelection campaign in the spring of 2006. On June 25, 2007, the district court issued a Memorandum Decision and Order Denying the Motion for Disqualification for Cause in which the court addressed all of the Lawrences' arguments in great detail.

The district court began its analysis by addressing the Lawrences' first concern regarding Judge Mitchell's disqualification in *Yovichin*. The court stated that it had no independent recollection of why the court voluntarily disqualified itself in *Yovichin* in 2001. The Order for Self Disqualification, which was included in the record as an exhibit, did not include any relevant facts of the *Yovichin* case. Therefore, Judge Mitchell investigated facts outside the record to determine why he had previously disqualified himself. However, the court file in *Yovichin* was purged, so Judge Mitchell was left to speculate his motivation for disqualification. The court noted that the Order for Self Disqualification was entered on November 20, 2001, which was Judge Mitchell's first day as a district judge. The court also recalled one lawsuit where Mr. Whelan was the opposing attorney while Judge Mitchell was still acting as an attorney and mentioned that that case was still pending at the time Judge Mitchell was transitioning from serving as an attorney to becoming a district judge. The court explained that this was the most likely reason the court disqualified itself. The court stated its reasoning as follows:

Self disqualifications in those cases were made to avoid any appearance of bias since just prior to November 21, 2001, the undersigned and one of the counsel in those cases assigned to the undersigned judge were in an adversarial relationship. Those self-disqualifications were only made to cases in which counsel were involved who were opposing adversarial counsel in other cases that were *still passing* which the undersigned was an attorney at the time he became district judge. Those self-disqualifications were made in *several* cases in an effort to

⁵ Prior to becoming a district judge, John T. Mitchell served as counsel for the Idaho Trial Lawyers Association. On November 16, 2001, four days before becoming a district judge, Leander L. James (Lee James) was substituted for counsel for the Idaho Trial Lawyers Association.

avoid the appearance of impropriety that would occur when one day the undersigned was your adversarial opponent in a litigated case, and the next day he was assigned to be the judge in another one of your cases.

(Emphasis in original). The court also stated that Mr. Whelan gave no reason to explain why the court might have a “personality conflict” with Mr. Whelan. The court reiterated that it had no bias or prejudice against Mr. Whelan and that any appearance of bias that may have existed in 2001 had been ameliorated with the passage of time.

Next, the court addressed the Lawrences’ claim that the court’s prior rulings against Mr. Whelan demonstrate bias or prejudice. The court reviewed the previous cases and explained the independent legal basis supporting its conclusions. In its decision, the district court explained that “[j]ust because one side wins does not mean the judge’s decision was based upon bias or prejudice against the party who lost or their attorney.” The court then addressed the concern that it was biased because of a friendship with a partner of the firm representing the Plaintiff. The court acknowledged that Capstar’s counsel, Susan Weeks, works in the same law firm as a friend, Lee James. However, the court also stated that it did not know whether Ms. Weeks and Mr. James are partners in the firm. The Court also explained that while Mr. James is considered a professional friend, Judge Mitchell has not seen Mr. James in any social capacity in the last fourteen months, the last occasion being a fundraiser for child abuse prevention. Furthermore, the court stated that Mr. James’ connection to the Idaho Trial Lawyers Association was irrelevant as Judge Mitchell is no longer a member and was unaware that Mr. James was in fact President of the organization.

The court addressed the issue of campaign contributions made by the law firm of Capstar’s counsel. The Court states that it had no knowledge of the fact that Ms. Weeks’ law firm made a \$1,000 contribution to its reelection campaign because of Idaho’s non-disclosure policies. Even with this knowledge, the court remained convinced that it was not biased or prejudiced as a result of the donation because Ms. Weeks’ firm consists of three attorneys and the identity of the donor was still concealed.

Lastly, the court addressed the Lawrences’ concern that the court would be biased against them for appealing to the Idaho Supreme Court. The district court took the time to relieve these concerns and stated:

This [c]ourt is human. It is quite a different thing to argue that because this [c]ourt committed error, which the Idaho Supreme Court corrected, that this [c]ourt would then hold against Mr. Whelan the fact he prevailed on behalf of his clients on those appeals. Quite the contrary. Mr. Whelan is to be commended for

bringing those appeals and having the Idaho Supreme Court correct the mistake. He did the right thing.

The court also explained that it was “neither insulted nor inconvenienced” by the filing of the Lawrences’ motion to disqualify, recognizing that it was Mr. Whelan’s duty to raise these concerns.

The Lawrences filed a Motion to Reconsider the district court’s denial of the Lawrences’ motion to disqualify, arguing that the court improperly engaged in independent fact finding outside of the record and speculated the reason for its voluntary disqualification in the *Yovichin* case. The district court reviewed the evidence and denied the Lawrences’ Motion to Reconsider. The Lawrences argue on appeal that the district court abused its discretion by failing to recuse itself for cause. The Lawrences claim they have noticed a pattern of favoritism throughout the nine years of litigation and question the court’s impartiality. Moreover, the Lawrences also contend that the court erred when it investigated facts outside of the record.

This Court reviews the denial of a motion to disqualify pursuant to Idaho Rule of Civil Procedure 40(d)(2) for an abuse of discretion, and the burden is on the person asserting the court abused its discretion. *Merrill v. Gibson*, 139 Idaho 840, 843, 87, P.3d 949, 952 (2004) (citing *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982)). “A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason.” *O’Connor v. Harger Constr., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008) (citing *West Wood Invs., Inc. v. Acord*, 141 Idaho 75, 82, 106 P.3d 401, 408 (2005)).

A review of the record shows that the district court specifically recognized that disqualification is a matter committed to the court’s discretion. “Whether it is necessary for a judicial officer to disqualify himself in a given case is left to the sound discretion of the judicial officer himself.” *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 113, 233 P.3d 38, 44 (2009) (citing *Sivak v. State*, 112 Idaho 197, 206, 731 P.2d 192, 201 (1986)). The court articulated its reasoning for finding that it was not biased or prejudiced against the Lawrences and this Court finds that the district court acted within the bounds of its discretion and reached its conclusion through an exercise of reason. Therefore, this Court affirms the district court’s decision not to disqualify itself.

Furthermore, the fact that the district court independently investigated facts outside of the record does not disturb this Court given the context of the inquiry. The Lawrences brought up the *Yovichin* case without any facts or details to help substantiate their claims. In order to truly

consider whether this argument had merit, the court needed to investigate the facts surrounding the voluntary disqualification. This Court concludes that the district court did not err by independently investigating facts that are not relevant to the pending case. See I.C. § 1-1802 and § 1-1803. Therefore, the district court did not abuse its discretion by denying the Lawrences' Motion for Disqualification for Cause. Nevertheless, because this case has such a long and complex history, with close to ten years of litigation, this Court believes that a new judge would provide a much needed fresh perspective and would eliminate any concern of bias. Therefore, this Court Orders that the case on remand be assigned to a new district judge.

C. The District Court Did Not Abuse Its Discretion by Finding the Defenses of Laches and Statute of Limitations to be Meritless

In their Answer, the Lawrences raised the defense of statute of limitations and then amended their Answer to include the additional defense of laches. In its Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment, the district court found that there was no merit to either defense. Specifically, the lower court found that there was no legal analysis to support the Lawrences' statute of limitations argument, and that the Lawrences failed to prove why Capstar's predecessor's claims should have been perfected through litigation. On appeal, the Lawrences argue that the district court erred in denying their equitable defenses.

"Whether a party is guilty of laches primarily is a question of fact and therefore its determination is within the province of the trial court. The decision to apply laches is committed to the sound discretion of the trial court." *Sword v. Sweet*, 140 Idaho 242, 249, 92 P.3d 492, 499 (2004) (internal citations omitted). Therefore, this Court reviews whether the trial court properly found (1) a lack of diligence by the party against whom the defense of laches is asserted, and (2) that the party asserting the defense was prejudiced. *Id.* (citing *Preservation Coal., Inc. v. Pierce*, 667 F.2d 851, 354 (9th Cir. 1982)).

1. The Defense of Laches

The Lawrences assert that Capstar and its predecessors are guilty of laches because the Lawrences have been prejudiced by having to locate witnesses and find evidence pertaining to an easement claim that originated more than thirty years ago. The Lawrences claim that they have also been prejudiced by the undue delay in Capstar or its predecessors asserting their legal right to the easement. The easement access problem originated from Funk's sale of property to Human Synergistics in 1975. Due to the delay in perfecting title over the easement, the Lawrences were unable to locate any existing company named Human Synergistics and were thus unable to depose the business when this suit began in 2002. The Capstar parcel was owned

by several different businesses before Capstar purchased it, and the Lawrences assert that those predecessors in interest did not perform their due diligence by perfecting a legal right to the easement through litigation and now the Lawrences are prejudiced by the delay.

The district court did not abuse its discretion in denying the Lawrences' defense of laches. The trial court acted within its discretion when it determined that the Lawrences failed to prove why Capstar's predecessor's claims should have been perfected earlier through litigation. It is true that Capstar did not assert its legal right to the easement until the Lawrences' interfered with Capstar's access. However, Capstar and its predecessors believed they had permission to use the road and in fact had been using the road for years prior to this lawsuit. The law does not compel people to perfect all property rights through litigation. In fact, many people acquire property rights through open, notorious, and continuous use of property for a specified period of time. Therefore, the Lawrences have not been prejudiced by the passage of time because prior to the Lawrences denying Capstar access, there was no need to litigate the easement rights.

2. The Defense of Statute of Limitations

On appeal, the Lawrences simply assert that Capstar's predecessor's rights to access the easement are "stale and barred by the statute of limitations." The Lawrences do not cite which statute of limitation is serving as a bar to Capstar's easement rights. This Court will not consider the Lawrences' statute of limitations claim on appeal because they failed to support their claim with any relevant legal authority or argument. This Court has consistently held that it will "not consider assignments of error not supported by argument and authority in the opening brief." *Jorgensen v. Coppedge*, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008); *see also* Idaho App. R. 35(a)(6) ("The argument shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to authorities, statutes and parts of the transcript and the record relied upon."). The Lawrences merely assert that because the easement originated more than thirty years ago, Capstar's claim should be barred by the statute of limitations. Such an assertion, without any legal authority or analysis tied to the facts, is not sufficient. This Court should not have to search the record to find the error on appeal. As such, the Lawrences statute of limitations defense is deemed waived on appeal. Therefore, this Court affirms the district court's ruling finding the defenses of laches and statute of limitations to be without merit.

D. No Attorney's Fees on Appeal

The Lawrences request attorney's fees on appeal, arguing that Capstar frivolously filed its Complaint "simply to tie this matter up in litigation for years under the expectation of running the Lawrences out of money, energy, and hope." The Lawrences are pro se litigants and did not cite to any specific statutory provision authorizing an award of attorney fees. The Court will not award the Lawrences attorney's fees because this Court has previously held that pro se litigants are not entitled to attorney's fees. *Michalk v. Michalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009).

VI. CONCLUSION

This Court reverses the district court's order granting summary judgment and remands the case for trial on the remaining easement theories: 1) an easement implied by prior use, 2) an easement by necessity, and 3) a prescriptive easement. The Court affirms the district court's decision denying the Motion for Disqualification for Cause and affirms the court's ruling that the Lawrences' defenses of laches and statute of limitations were without merit. Nevertheless, this Court orders that a new judge shall be assigned to preside over all further proceedings in this case. No attorney's fees are awarded on appeal. Costs on appeal are awarded to the Lawrences.

Chief Justice BURDICK, Justices EISMANN, J. JONES and HORTON CONCUR.

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Douglas S. Marfice, ISB #4072
Theron J. De Smet, ISB #8184

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2013 MAY 30 PM 4: 31

CLERK DISTRICT COURT
Paul Crumpach
DEPUTY

Attorneys for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff/Counterdefendant,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants.

SPECTRA SITE COMMUNICATIONS, LLC,
a Delaware limited liability company,

Plaintiff/Counter Defendant,

vs.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants,

And JOHN DOES 1-6, Third Party Defendants.

Case No. CV-02-7671

Case No. CV-03-4621

**TRIAL WITNESS LIST
(CONSOLIDATED)**

COME NOW Defendants/Counterclaimants, Douglas and Brenda Lawrence
("Defendants"), by and through their attorneys of record, Ramsden & Lyons, LLP and hereby

submit a witness list of persons who may be called to testify at trial. Defendants reserve the right to supplement or withdraw any of the witnesses listed and call any witnesses listed by Plaintiff/Counterdefendant.

1. **Mike Kahoutec**
5122 S. Signal Point Road
Post Falls, ID 83854
(208) 457-0828
2. **John Rook**
8301 W. Sausser Dr.
Coeur d'Alene, ID 83814
(208) 664-4014
3. **Wes Hamilton**
11118 E. Grace Ave.
Spokane, WA 99206-4662
(509) 924-0078
4. **Greg Stern**
4933 E. French Gulch Road
Coeur d'Alene, ID 83815
(208) 664-7729
5. **Mike Wallace**
(Address Unknown)
6. **John Bedini**
C/o Bedini Electric
10183 N. Aero Dr., Ste. 2
Hayden, ID 83835
(208) 667-8300
7. **Raymond Goodwin**
Spectra Site Communications
100 Regency Forest Dr., Ste. 400
Cary, North Carolina 27511
(919) 466-5983
8. **Pamela Waitman**
(Address Unknown)
(425) 278-7569

9. **Sheila Bernard**
Spectra Site Communications, Inc.
2301 Dupont Dr., Ste. 200
Irvine, CA 92612
(949) 255-2325
10. **Jim Hollis**
1620 N. Mamer Rd., Ste. C-400
Spokane, WA 99216
(509) 893-9600
11. **Alexander Macheras**
American Tower Corporation
10 Presidential Way
Woburn, MA 01901
(781) 926-4921
12. **Tony Rosa**
American Tower Corporation
10 Presidential Way
Woburn, MA 01901
(781) 926-4921
13. **Perry Satterlee**
ClearWire Corporation
1475 120th Ave. NE
Bellevue, WA 98005
(425) 216-7600
14. **Daniel Kawakami**
Trinity Broadcasting Network
P.O. Box A
Santa Ana, CA 92711
(714) 832-2950
15. **Bruce Anderson**
Kootenai County Surveyor
451 Government Way
Coeur d'Alene, ID 83814
(208) 446-1000

16. **Tom Reese**
Spectra Site Communications, Inc.
2301 Dupont Dr., Ste. 200
Irvine, CA 92612
(949) 255-2325
17. **Wilber Mead** (deceased) - Via Deposition/Affidavit
15429 W. Mead Road
Post Falls, ID 83854
18. **Colby M. May**
American Center for Law and Justice
Washington DC
1-800-684-3110
19. **Kootenai County Sheriff Deputy D. Milhalek**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
20. **Kootenai County Sheriff Deputy R.E. Lyons**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
21. **Kootenai County Sheriff Deputy C.P. Kerzman**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
22. **Kootenai County Sheriff Deputy J.M. Shiflett**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
23. **Kootenai County CRT A. Lamanna**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
24. **Kootenai County Sheriff Deputy R.P. Higgins**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300

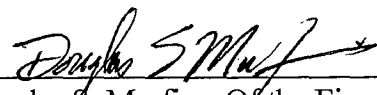
25. **Kootenai County CRT A. Funk**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
26. **Kootenai County Sheriff Deputy D. Moyer**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
27. **Kootenai County Sheriff Sargent K. Edmondson**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
28. **Kootenai County Sheriff Deputy D.C. Sciortino**
5500 N. Government Way
Coeur d'Alene, ID 83816
(208) 446-1300
29. **R. Scot Haug**
Post Falls Police Department
1717 E. Polston Ave.
Post Falls, ID 83854
(208) 773-3517
30. **Chris Renaldo**
Renaldo Land Surveying
711 Center Avenue
St. Maries, ID 83861
(208) 245-0218
31. **Michelle Jirava**
First American Title Company
1866 N. Lakewood Drive
Coeur d'Alene, ID 83816
(208) 667-0567
32. **Justin Sternberg**
1677 E. Miles Avenue
Hayden Lake, ID 83835
(208) 659-4800

33. **William Giebel, Jr.**
10311 E. Montgomery Dr.
Spokane, WA 99206
(509) 995-6876
34. **William Giebel, Sr.**
10311 E. Montgomery Dr.
Spokane, WA 99206
(509) 991-9534
35. **Meckel Engineering and Surveying**
7600 N. Government Way, Ste. #3
Coeur d'Alene, ID 83815
(208) 667-4638

And any witness called or listed by Plaintiff/Counterdefendant and such other witnesses as may be necessary for rebuttal.

DATED this 30th day of May, 2013.

RAMSDEN & LYONS, LLP

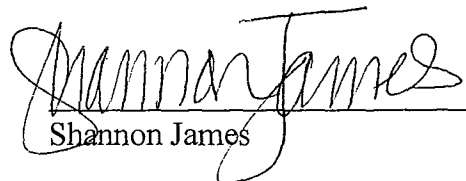
By: 
Douglas S. Marfice, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of May, 2013, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

☐ US Mail
☐ Overnight Mail
☒ Hand Delivered
☐ Facsimile (208) 664-1684


Shannon James

RAMSDEN & LYONS, LLP
700 Northwest Blvd.
Post Office Box 1336
Coeur d'Alene, Idaho 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884
Douglas S. Marfice, ISB #4072
Theron J. De Smet, ISB #8184

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2013 MAY 30 PM 4: 31

CLERK DISTRICT COURT
Barbara Crum
DEPUTY

Attorneys for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff/Counterdefendant,

vs.

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LAWRENCE, husband and wife,

Defendants/Counterclaimants.

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Plaintiff/Counter Defendant,

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LAWRENCE, husband and wife,

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And JOHN DOES 1-6, Third Party Defendants.

Case No. CV-02-7671

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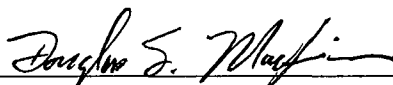
**TRIAL EXHIBIT LIST
(CONSOLIDATED)**

COME NOW Defendants, and submit the attached Exhibit List identifying the Defendants' proposed trial exhibits.

Defendants reserve the right to supplement and amend this Exhibit List prior to trial.

DATED this 30th day of May, 2013.

RAMSDEN & LYONS, LLP

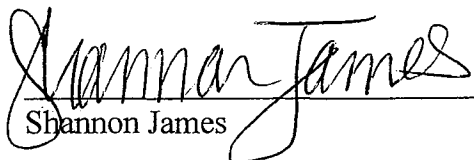
By: 
for Theron J. De Smet, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of May, 2013, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

☐ US Mail
☐ Overnight Mail
☒ Hand Delivered
☐ Facsimile (208) 664-1684


Shannon James

DEFENDANTS/COUNTERCLAIMANTS' EXHIBIT LIST

(CONSOLIDATED)

Case No: **CV-03-04621 / CV-02-7671 (Consolidated)**

Trial Date: **June 11, 2013**

Title of Cases: ***Tower Asset Sub, Inc. v. Lawrence***
Capstar Radio Operating Company v. Lawrence

____ PLAINTIFF'S EXHIBITS (list numerically)

X DEFENDANT'S EXHIBITS (list alphabetically)

NO.	DESCRIPTION	BY STIP.	OFFERED	RECEIVED	REFUSED	RESERVE
A	Warranty Deed-Lawrence					
B	Access License Agreement between Nextel West Corp and Douglas and Brenda Lawrence					
C	Assignment of Leases – Deposition Exhibit 4 from the Deposition of Thomas Martinich					
D	Certificate of Merger – Deposition Exhibit 5 from the Deposition of Thomas Martinich					
E	Communications Lease Agreement – Deposition Exhibit 3 from Deposition of Thomas Martinich					
F	Statement signed by Don Snodgrass on May 8, 2000					
G	May 8, 2000 statement referenced in incident report 00-9842					
H 1 - 7	Kootenai County Sheriff's Incident Reports filed against Douglas Lawrence (2000-2002; 7 total)					
I	April 13, 2002 SpectraSite Letter noticing Defendants of renewal of License Agreement					
J	August 28, 2002 Kootenai Electric Letter requesting to lock Defendant's gate					
K	October 10, 2002 signed acknowledgment of receipt of key by Nextel employee Jim Hollis					

DEFENDANTS' EXHIBIT LIST - 1

L	October 17, 2002 delivery confirmation of key to Tom Grapenster with AT&T					
M	October 16, 2002 signed receipt of key to Adelphia					
N	October 9, 2002 signed receipt of key to Kootenai Electric					
O	October 9, 2002 signed receipt of key to Verizon					
P	October 15, 2002 email from Shelia Bernard (SpectraSite) to Douglas Lawrence – Subject [RE: Blossom Mountain Access Agreement]					
Q	October 15, 2002 email from Shelia Bernard - Subject [Attention Doug]					
R	October 21, 2002 email from Pamela Waitman (Nextel) – Subject [Blossom Mtn cell site access]					
S	October 24, 2002 undeliverable letter to Nextel Communications					
T	October 24, 2002 returned (unaccepted) delivery confirmation					
U	October 31, 2002 letter from Raymond Goodwin (SpectraSite) to Defendants					
V 1 - 7	Kootenai County Sheriff's Crime Reports 2002 - 2003 by Douglas Lawrence (2002-2003; 7 total)					
W	January 13, 2003 Letter from Raymond Goodwin (SpectraSite) to Defendants					
X	January 9, 2003 Letter from Nextel noticing Defendants of assignment					
Y	Envelope of March 14, 2003 Letter from Nextel					
Z	Defendant Mack's Affidavit in Support of Defendants Lawrences' Motion in Opposition to Plaintiff's Motion for Leave to Amend Complaint to Include Punitive Damages					
AA	Kootenai County Sheriff's Crime Report 03-21559 filed September 16, 2003 by Douglas Lawrence					
BB	Check receipt for April 2007 payment for license agreement					
CC	April 16, 2007 Letter from American Tower offering lump sum payment					

DEFENDANTS' EXHIBIT LIST - 2

DD	July 18, 2007 Notice of Default sent to American Tower					
EE	Delivery confirmation of July 18, 2007 notice of default					
FF	Kootenai County Sheriff's Department Law Incident Table showing incident 07-23671					
GG	License Agreement between Tower Asset Sub Inc and Infinity Communications					
HH	Tower Attachment License Agreement between Tower Asset Sub Inc and Wired or Wireless, Inc.					
II	Site Schedule to the Master Site Lease Agreement dated April 20, 1999					
JJ	Affidavit of James Stillinger provided in CV03-5003					
KK	Record of Road and Gate Locations in Parcel 21-8500					
LL	November 17, 2000 Business correspondence between Colby May and John Rook and copied to Defendants					
MM	Antenna Tower Building and Real Property Lease Agreement between John Rook and Trinity Broadcasting Network					
NN	Lease agreement between Adelphia Cable and John Mack and the Defendants					
OO	March 13, 2000 affidavit of Wilber Mead					
PP	February 1, 2002 Statement from Blue Sky Broadcasting					
QQ	Access License Agreement between Great Northern Broadcasting and the Defendants					
RR	Copy of Metsker Map dated March 1959					
SS	June 28, 2007 Affidavit of Kootenai County Surveyor Bruce Anderson					
TT	1907 Viewers report for Mellick Road					
UU	June 17, 1910 Plat of Survey for Mellick Road					

DEFENDANTS' EXHIBIT LIST - 3

VV	July 1977 Easement Idaho Forest Industries granted to Don Johnson and John McHugh and recorded as instrument #773361.					
WW	August 13, 2007 Deposition Transcript of Harold Funk					
XX 1 - 3	Aerial Photographs of Subject Area by Kootenai County KCWebMap (3 total)					
YY 1 - 5	Aerial Photographs of Subject Area by GoogleEarth (5 total)					
ZZ	Affidavit of John Mack in Support of Defendants' Motion for Enlargement					
AAA 1 - 2	Emails from Sheila Barnard dated 10/15/2002 (2 total)					
BBB	Email from Pamela Waitman dated 10/21/2002					
CCC	Email from Scott Haug dated 10/27/2003					
DDD	Aerial Photographs of Subject Area by GoogleEarth showing roads					
EEE 1 - 32	Aerial Photographs of road system and gates in subject area (32 total)					
FFF 1 - 5	Photographs of gates on subject area roads					

DEFENDANTS' EXHIBIT LIST - 4

STATE OF IDAHO
COUNTY OF KOOTENAI
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2013 MAY 30 PM 3:10

CLERK DISTRICT COURT

DEPUTY

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671


FIRST AMENDED EXHIBIT LIST

COMES NOW Plaintiff, by and through its attorneys of record, James, Vernon & Weeks, P.A. and hereby submit its First Amended Exhibit List as required by the Court's scheduling order in the form attached hereto. In addition to the exhibits listed, Plaintiff may use any exhibit contained on Defendants' Exhibit List.

DATED this 29th day of May, 2013.

JAMES, VERNON & WEEKS, P.A.

By


SUSAN P. WEEKS

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of May, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

<input type="checkbox"/>	U.S. Mail	<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Hand Delivered	<input type="checkbox"/>	Telecopy (FAX)

Doug Marfice
Theron J. DeSmet
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Coeur d'Alene, ID 83816
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Susan D. Weeks

PLAINTIFF'S EXHIBITS**CASE NO.:** CV-02-7671**TRIAL DATE:** June 11, 2013**CASE TITLE:** CAPSTAR RADIO v. LAWRENCE

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
1	Illustrative depiction of Sections 15, 22 and 21					
2	Sales Contract, filed in Book 55, Page 118 on August 28, 1968					
3	Real Estate Contract, filed in Book 57, page 119					
4	Warranty Deed filed as Instrument No. 613471					
5	Sale Agreement Instrument No. 672112					
6	Sale Agreement Instrument No. 672113					
7	Sale Agreement Instrument No. 672114					
8	Sale Agreement Instrument No. 672115					
9	Sale Agreement Instrument No. 672116					
10	Sale Agreement Instrument No. 672117					
11	Sale Agreement Instrument No. 672118					
12	Statutory Warranty Deed Instrument No. 653865					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
13	Warranty Deed Instrument No. 653864					
14	Memorandum of Contract, filed on as Instrument No. 732027					
15	Roadway Easement Inst. No. 773361					
16	Memorandum of Sale Agreement Inst. No. 1098895					
17	Corporation Deed Inst. No. 1114689					
18	Warranty Deed Inst. No. 1279685					
19	Warranty Deed Inst. No. 1283911					
20	Deed Inst. No. 1452670					
21	Corporation Deed Inst. No. 1452959					
22	Easement Inst. No. 1454068					
23	Mutual Agreement Grant of Easement and Quit Claim Deed Inst. No. 1462711					
24	Memorandum of Sale Agreement Inst. No. 1464206					
25	Quitclaim Deed Inst. No. 1533768					
26	Quitclaim Deed Inst. No. 1543875					
27	Warranty Deed Inst. No. 1551840					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
28	Warranty Deed Inst. No. 1551841					
29	Deed Inst. No. 720411					
30C	Warranty Deed Instrument No. 1161438 and re-recorded as Instrument No. 1167510					
31C	Quitclaim Deed Instrument No. 1168384					
32C	Quit Claim Deed Instrument No. 1326440					
33C.1	Warranty Deed Instrument No. 1565152					
33C.2	Warranty Deed Instrument No. 1656413					
34	Chicago Title Insurance Company Policy No. 13 0035 106 00001140					
35	Deed Inst. No. 708987					
36	Deed Inst. No. 993113					
37	Warranty Deed Inst. No. 497858					
38	Right of Way Easement Inst. No. 494343					
39	Right of Way Easement Inst. No. 494344					
40	Blossom Mountain Estates Plat Book I, Page 42					
41	Record of Survey Inst. No. 15421875					
42	Kootenai County Assessor Office Segregation Revisions Section 22					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
43	Kootenai County Assessor Office Segregation Revisions Section 21					
44	GLO Survey of Township 50 No, Range No. 5 West					
45	Blow up of GLO map in Section 15, 21 and 22					
46	1957 USGS Historical Map of Sections 15, 21 and 22					
47	1959 Metsker Map					
48						
49	1981 USGS map of 1975 aerial					
50	Funk Ownership Exhibit					
51	2010 USGS map					
52						
53	Viewer Report 271 and branch change Mellick Road					
54	Mack Affidavit					
55	Deed Inst. No. 1558483					
56	Deed Inst. No. 1758296					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
57	Mellick Road Overlay					
58	Mellick Road Overlay					
59	Conditional Use permit C-593-86					
60	Conditional Use Permit No. C-658-88					
61	Conditional Use Permit No. C-686-89					
62	Conditional Use Permit No. C-841-94					
63	Conditional Use Permit No. C-940-97					
64	Conditional use Permit No. C-1058-01					
65	Conditional Use Permit No. C-1092-03					
66	Notice Inst. No. 1403054					
67	Civil Violation No. CV- 4306.06.B					
68	Harold Funk deposition					
69	Gate Picture					
70	Gate Picture					
71	Gate Picture					
72	Gate Picture					
73	Gate Picture					
73A	Lock Picture					
74	Sims Liesche 3/19/99 letter of County Officials					
75	2/29/00 Lawrence letter to Douglas					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
76	5/31/99 Sims Liesche Statement					
77	Lawrence 6/1/2000 submittal to Kootenai County Planning					
78	6/14/99(00) Lawrence letter to Kootenai County Prosecutor					
79	6/26/00 Lawrence letter to Kootenai County Planning Dept					
80	6/30/00 Letter to Sheriff					
81	12/5/00 Petition for Judicial Review Kootenai Case CV00-7756					
82	10/19 Verizon key letter and 11/19/01 Verizon Key Receipt					
83	6/10/03 Verizon letter to Lawrence					
84	10/10/03 Stimson letter to Lawrence					
85	Great Northern Broadcast Access License Agreement					
86	Blue Sky Statement dated 2/1/02					
87	Tower License Agreement					
	ANY EXHIBIT ON DEFENDANTS' LIST					

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Attorneys for Plaintiffs

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2013 JUN -4 PM 4:49

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

**CONSOLIDATED PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

SPECTRA SITE, LLC., a Delaware limited
liability company,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No.: CV 03-4621

PLAINTIFFS' CONSOLIDATED PROPOSED FINDINGS OF FACTS AND CONCLUSIONS
OF LAW: 1

Plaintiffs Capstar Radio Operating Company and Spectra Site L.L.C., by and through Susan P. Weeks and Cynthia K.C. Meyer, of JAMES, VERNON & WEEKS, P.A., their attorneys, submits the following Consolidated Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

If any of the following Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law.

A. Parties

1. The lands encompassed in this case are located in Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho.
2. Plaintiff Capstar Radio Operating Company is a Delaware corporation which owns property in the SW $\frac{1}{4}$ of Section 22.
3. Plaintiff Spectra Site, LLC, is a Delaware limited liability company that leases a site for its communication facilities on a parcel of property owned by Robert Hall.
4. Defendants Doug and Brenda Lawrence are husband and wife, and own property in the SE $\frac{1}{4}$ of Section 21.

B. The Access Road

5. Access to the SW $\frac{1}{4}$ of Section 22 is provided by a road commonly known as Blossom Mountain Road.
6. Blossom Mountain Road does not show on the United States Geological Survey (USGS) maps for 1957.
7. Blossom Mountain Road appears on a 1959 Metsker map.

8. In 1966, Pike and Agnes Reynolds sold a parcel of property to General Telephone Company of the Northwest (GTC) together with an access easement across the SW ¼ of Section 22 and an easement across the SE ¼ of Section 21 for construction of a microwave tower and facilities.
9. In 1966, GTC also obtained an easement from Glen and Florence Blossom and their son, Wilbur Mead, and his wife, Ethel Mead across the SW ¼ of Section 21. This easement gave GTC the right to make minor alterations on the existing road and required GTC to construct a gate to be owned by Blossom/Mead following its construction.
10. Also in 1966, GTC obtained an easement from William and Edna Ulrich across the existing access road, together with the right to make minor alterations to the road. GTC was required to build two gates on the road which would become the property of Ulrich.
11. In 1969 when Harold and Marlene Funk purchased their property the access road was an improved road with gravel on it.

C. Unity and Severance of Title

12. Equitable title to Government Lot 3 in Section 15; Government Lot 4, the SW ¼ of the NW ¼ and the SW ¼ of Section 22, and the SE ¼ of Section 21 vested in Funk in 1969. Legal title was not vested in Funk in these parcels until 1974.
13. Funk purchased the properties for investment purposes.
14. Funk obtained an easement for the benefit of these lands from Mead in 1972 across the SW ¼ of Section 21.

15. In 1975, Funk entered into a series of Sales Agreements whereby he conveyed equitable title in Government Lot 3 in Section 15, Government Lot 4 and the SW ¼ of the NW ¼ in Section 22 and the SE ¼ of Section 21 to Human Synergistics, Inc. At the same time, Funk executed and deposited with Washington Trust Bank fulfillment deeds. These deeds were not used when Funk conveyed legal title to these properties to Human Synergistics in 1992.

16. Funk subsequently split off and sold four parcels in the SW ¼ of Section 22 to individuals. Kootenai Electric Cooperative obtained a parcel in August 1976. The Hall parcel was sold to John Rasmussen and Neil Chamberlain in August 1976. In 1984, Funk sold a parcel to John Sonneland. In October 1989, Funk sold a parcel to Kootenai Broadcasting, which is now the Capstar parcel.

17. Funk sold his remaining lands in the SW ¼ of Section 22 to John Mack in 1992.

D. Use of the Blossom Mountain Access Road

18. When Reynolds sold their property, it was contemplated that future sales of the land would be to individuals who intended to use it to place microwave towers. Reynolds's sales agreement required their buyers to pay one-half of any proceeds to Reynolds if the property were sold to another individual for use as a microwave tower site.

19. The GTC access road was the only road used by Harold Funk and led to the top of the mountain where GTC's property was located. The road was used by Funk

20. There exists a conglomeration of tower sites on Blossom Mountain located in the SW ¼ of Section 22.

21. The Access Road has been used primarily for commercial purposes in servicing the tower sites.
22. The Sales Agreements (Funk to Human Synergetics) contained a clause which expressed an intent by Funk to continue using the access road as the access to Funk's retained property in the SW ¼ of Section 22.
23. Fulfillment deeds were deposited by Funk with Washington Trust Bank at the time the Sales Agreements were executed. The fulfillment deed for the SE ¼ of Section 21 deposited by Funk with Washington Trust Bank in 1975 was not used to transfer legal title. Instead, a new deed was prepared in 1992 which did not contain the reservation of easement discussed in the Sale Agreement.
24. The access road was used by Funk's tenant, Kootenai Broadcasting, commencing in 1988. This tenant subsequently entered into a lease agreement with Mack and Lawrence and continued to use the road.
25. Several conditional use permits were submitted to Kootenai County relating to the parcels sold by Funk. These permits all reflect that the access road was the travel way being used by Funk's successors to access the parcels sold by Funk.
26. Mack filed a subdivision plat which claimed the road as the primary access to Mack's lands in the SW ¼ of Section 22.
27. Arman and Mary Jane Farmanian, predecessors to Lawrence, acknowledged the road as the historic access to Funk's parcel in the SW ¼ of Section 22. A Trust Easement recorded by Farmanian gave constructive notice of this fact. This easement was included in Lawrence's title commitment and gave constructive notice of its terms.

28. Lawrence's title commitment included the Sale Agreement with the reservation of an easement gave actual notice that Funk and their successors claimed a right to use the road.
29. Soon after closing on the SE ¼ of Section 21, Lawrence posted the property with "no trespassing" signs. Some of these signs were located near the gate situated near the boundary of Lawrence's parcel.
30. Lawrence worked logging his land in 1996 and 1997 and was aware of the commercial traffic crossing his land.
31. After acquiring equitable title in the property, Lawrence researched county records to learn the identity of individuals using the road.
32. Lawrence took several actions indicating that use of the access road was without his permission. These included posting the land, stopping and informing users they did not have his permission to cross, locking the gate located near his property boundary to prohibit access; writing county officials seeking prosecution for use of the road, attending public hearings and denying users had a right to use the road, and filing police reports.
33. When Funk bought the property in 1969, it was not forested. When Lawrence purchased the property in 1996, it was forested. A survey from 1998 showed an old fence line existed along the southern portion of Section 21.
34. In 1996, the conjunction of Signal Point Road and Blossom Mountain Road was gated at the request of the landowners who owned property on Blossom Mountain with the permission of Post Falls Highway District. The gate was locked and only authorized users of the road were provided keys.

35. There were three other gates on the road, which gates were likely placed by GTC pursuant to the terms of the license agreement.
36. Idaho Forest Industry owned Section 28 at one point in time. A forester for IFI stopped John Mack in 1994 and told him that no one had permission to use the access road as it crossed the IFI property and demanded he cease using the road. Mack testified IFI took the position it would not give anyone access across their property.
37. Hall's predecessor, Van Sky, regularly used the road for access to the Hall parcel. Hall's predecessor and tenant, Switzer Communication, regularly used the site.
38. Two of Hall's tenants, Switzer Communication and Pass Word, obtained default judgments on their quiet title countersuit against Lawrence in Kootenai County Case No. CV-99-6215.
39. John Rook was contacted by Lawrence about use of the road and Rook claimed his company, Rook Broadcasting, had the right to use the road.
40. Rook's company had tenants on his site, Trinity Broadcasting and EEK Broadcasting, who also used the road.
41. Capstar continued the tenant leases on the site and continued to use the road after acquiring the Rook parcel.

E. Mellick Road Access

42. In 1907, the Government Land Office resurveyed the lands in question in this litigation. That survey revealed that a road had been in Section 15 that followed a creek bed and branched toward the middle of the section. The east branch extended in the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 15 to the homestead of Charles Steele. The western branch extended southwesterly through Government Lot 2 in Section 15,

continued southwesterly through the SE ¼ of Section 16 and continued southerly through Section 21. The GLO survey was conducted May 17, 1907 through June 14, 1907.

43. In September 1907, A.B. Mellick and four others petitioned the Board of County Commissioners to lay out a county road with a branch to run to the home of A.B. Mellick and sons, and an eastern branch to extend to an existing road to the place of Charles Steele. The requested road was estimated to be approximately one mile long. The road was to commence at the end of Walker Road, then run south along Spring Branch Creek to the fork of the creek, at which point it was to divide with one branch (the western branch) to run by the most feasible route to the place of A.B. Mellick and the other branch to run to the place of Charles Steele and connect with the road already made to the end of the east branch of Spring Branch Creek.
44. The Board of Kootenai County Commissioners approved the petition for Mellick Road and the county surveyor was appointed as viewer to view out and survey the road and report back to the Board of County Commissioners.
45. The commissioners accepted Mellick Road as viewed on October 15, 1907.
46. Mellick road was placed in the Kootenai County Road Map book and designated as Road No. 217.
47. In 1910, a change in the east branch of Mellick Road, shown as Road No. 299, was accepted by the Kootenai County Board of commissioners which altered the previously viewed branch of the road going to Charles Steele's place.
48. Nothing in the county record indicates the roads were constructed by Kootenai County after being laid out and accepted by the commissioners.

49. In 1957, a United States Geological Survey (USGS) topography map was prepared which included the Blossom Mountain area. It included a portion of a road in Section 15 on Blossom Mountain extending a short distance south of the area now known as Schilling Loop, and shown on the 1907 Viewers' Report as Walker Road.
50. The legend on the map indicates the road portrayed is an unimproved dirt road. The map does not show Mellick Road existing as laid out in 1907.
51. The same map shows Signal Point Road, but does not show Blossom Mountain Road.
52. A 1959 Metsker map shows Blossom Mountain Road and Mellick Road as dirt roads. A portion of the north face road lies outside the alignment laid out in 1907 for the Mellick Road right of way and a portion of the road lies within the alignment.
53. Post Falls Highway District is the governmental agency responsible for maintenance of the public roads in the area of Blossom Mountain. It was created by statute in 1971. It retains the prior records of former highway districts which previously serviced this area, as well as county records regarding this area. Post Falls Highway District has no record that Mellick Road was ever constructed through its entirety as shown on the Viewers' Report.
54. Post Falls Highway District maintains a portion of Mellick Road to an area adjacent to property previously owned by the Loudin family.
55. A USGS topographic map published in 1981, and prepared using data from a 1975 aerial and data checked in the field in 1977, showed the existence of Blossom Mountain Road. The map showed Schilling Loop improved as a light duty road. It also showed a small segment of Mellick Road as an unimproved road with two home on the east side of the unimproved portion.

56. The Loudin family sued their neighbor, Stokes, in 1987 seeking to prohibit travel beyond the maintained portion of Mellick Road. The Stokes family had property in the vicinity of Charles Steele's place, off the east branch laid out for Mellick Road, in an area now shown on maps as Monument Drive in the North $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 15. There existed a dirt road to this home. The Stokes family prevailed and Gary Haman, District Judge, entered an order prohibiting Loudins from blocking the public road known as Mellick Road particularly as it traversed the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15.
57. Although laid out in 1907, Mellick Road beyond the Stokes home was undeveloped and unimproved. Post Falls Highway District never issued any permits to any person to improve Mellick Road beyond the Monument Drive segment.
58. It was impossible to reach the top of Blossom Mountain using the improved portion of Mellick Road during the 1970's through the early 1980's.
59. In 2004 the Fritz Heath Forest Tracts showed a road labeled "Mellick Road" outside the road laid out and accepted by Kootenai County.
60. When John Mack purchased his property in 1992, the road on the north face appeared that it had not been used for nearly 20 years, and the road was overgrown with trees over 20 feet tall.
61. Mack was an excavator. In 2006, Mack brought in heavy equipment and blazed a logging road down the north face of Blossom Mountain which roughly followed the same road shown on the 1959 Metsker map. As with the road shown on the 1959 Metsker map, Mack was unable to contain to the road to land originally owned by

Funk or Reynolds. The road veered outside the public right of way alignment in Sections 21 and 16.

Conclusions of Law

If any of the following Conclusions of Law are deemed Findings of Fact, they are incorporated into the Findings of Fact.

A. Jurisdiction

1. The party has jurisdiction of this matter as it involves real property in Kootenai County, Idaho.

B. Conveyances

2. A conveyance embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or encumbered, or by which the title to any real property may be affected, except will. I.C. § 55-813.
3. A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. I.C. § 55-601.
4. An easement may be created in a contract of sale, in a lease, or in a declaration of condominium.
5. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed. I.C. § 55-603.

6. A document must be properly acknowledged to provide constructive notice of its contents. I.C. § 55-805.
7. There was unity of title in Funk in the properties at issue in this matter.
8. Funk's unity of title was severed when Funk entered into a contract of sale for the SE ¼ of Section 21 in 1975. Funk retained a part of the adjoining parcel.
9. The recorded 1975 Contract of Sale on the SE ¼ of Section 21 recorded by Funk was not properly acknowledged by Funk and did not provide constructive notice of its contents, even though it was acknowledged by the buyer, Human Synergistics.
10. The 1996 easement recorded by Farmanian provided constructive notice of its contents.
11. The 1992 deed from Funk to Human Synergistics transferred legal title of the SE ¼ of Section 21, and merged all covenants in the Sale Agreement.

C. Easement Implied by Prior Use

12. Before Funk conveyed the SE ¼ of Section 21 to Human Synergistics, there was usage of the access road existing between the SE ¼ of Section 21 and Funk's portion of the SW ¼ of Section 22 that, had the two parcel been separately owned, the access road could have been an easement appurtenant to the SW ¼ of Section 22.
13. The usage of the road was apparent to anyone viewing the property.
14. The executed Sale Agreement between Funk and Human Synergistics demonstrates that Funk intended to reserve an easement across the SE ¼ of Section 21, but it was omitted in the final written instrument executed seventeen years later from Funk to Human Synergistics.

15. It was the intent of the parties as shown by the facts and circumstances surrounding the Human Synergistics transaction that Funk should retain an easement for the benefit of Funk's remaining parcel in the SW ¼ of Section 22.
16. Mellick road was undeveloped and unopened at the time that Funk severed his property.
17. At the time of severance, the access road provided the only usable means of access to the SW ¼ of Section 22.
18. The usage made by Funk of the access road, including the portion crossing the SE ¼ of Section 21, was reasonably necessary to access Funk's property in the SW ¼ of Section 22.
19. Funk's remaining parcel is entitled to an implied easement by prior use.
20. This easement is appurtenant to Funk's lands in the SW ¼ of Section 22, runs with the land, and is not extinguishable.

D. Easement by Prescription

21. Each Plaintiffs' prescriptive use must be measured from their own use, although some elements may be mutual.
22. The access road was clearly visible on the SE ¼ of Section 21. Its existence was known to Human Synergistics at the time it acquired equitable title in 1975.
23. Human Synergistics was aware from the sales transaction that Funk claimed a right to cross over the road based upon the facts and circumstances evidenced in the Sale Agreement.
24. The attempt to reserve an easement by Funk in the Sales Agreement was ineffective, but established a claim of title for such easement.

25. Funk continued to use the access road after the sale to Human Synergistic. Although Funk was seldom in the area after moving in 1975, in 1988, Funk's tenant Kootenai Cable, Inc, leased some of Funk's land in the SW ¼ of Section 22 to build a 40' microwave tower for cable television transmission in t. After Mack purchased the property, this tenant continued on as a tenant of Mack and Lawrence and continued to use this transmitter site.
26. Hall's predecessor purchased their property in 1976. Hall's predecessors were aware that Funk claimed a right in the sale to Human Synergistics to continue using the access road. Hall's predecessors continued using the road under this claim. When challenged by Mack on behalf of Lawrence in 1997 about using the access road, Hall maintained he had a right to use the road and his tenants continued to use it.
27. Capstar's predecessors purchased their property in 1989. The road was used by Rook under a claim of right that he had an easement originating with Funk. When Lawrence contacted John Rook to challenge his use of the road, Rook claimed an easement in the access road.
28. Lawrence had actual notice and constructive notice from his title commitment that Funk and his successors claimed a right to use the access road.
29. To protect his property rights, in 1996 Lawrence posted his property "no trespassing", including an area near the gate entering his property. At a later date, Lawrence began locking the gate. Lawrence took other measures to protect his property from trespass.
30. Lawrence's predecessors understood that Funk and his successors in title claimed a right to use the access road across the SE ¼ of Section 21.

31. The use of Hall and Hall's predecessors was continuous according to the nature of the use and the needs of Hall and their tenants.
32. The use of Capstar and Capstar's predecessors was continuous according to the nature of the use and needs of Capstar and their tenants.
33. Hall and Hall's predecessor's use of the road was adverse and under a claim of right.
34. Capstar and Capstar's predecessor's use of the road was adverse and under a claim of right.
35. Hall and Hall's predecessors use has met the statutory period. Hall's predecessors began using the road in 1975 under a claim of right, and such use continued until suit was filed. Further, Hall's tenants continued to use the road after it was posted by Lawrence with a no trespassing signs in 1996. Under either measure, Hall's use of the road meets the statutory period.
36. Capstar and Capstar's predecessors use has met the statutory period. Capstar's predecessors began using the road in 1989 under a claim of right, and such use continued until suit was filed. Further, Hall's tenants continued to use the road after it was posted by Lawrence with a no trespassing signs in 1996. Under either measure, Capstar's use of the road meets the statutory period.

E. Easement by Necessity

37. There was unity of title in Funk in the properties at issue in this matter.
38. The only usable access at the time Funk severed the SE ¼ of Section 21, the SW ¼ of the NW ¼ of Section 22, and the Government Lot 3 in Section 15 was Blossom Mountain Road.

39. The road depicted on the north side of Blossom Mountain in the 1959 Metsker map did not exist in 1975 when Funk segregated title.
40. A portion of Mellick Road that was laid out was unopened and undeveloped, including the portion of the right of way that touched Government Lot 3 in Section 15, when Funks segregated title in 1975.
41. Funks failure to include an easement in the 1992 warranty deed to Human Synergistics landlocked the Capstar parcel.
42. Funks failure to include an easement in the 1992 warranty deed to Human Synergistics landlocked the Hall parcel.
43. Mack constructed a road on the north face of Blossom Mountain. Although Mack was an excavator by trade, he was unable to contain the road to lands previously owned by Funk. To utilize this road, Capstar and Hall would be required to obtain easements from landowners whose title is unrelated to Funks title.
44. Spectra Site has a license from Stimson Lumber to use the access road in Section 28.
45. While it owned the property, Idaho Forest Industries, Inc. denied permission to users of the road to pass over the road.
46. A prescriptive easement vests at the end of the statutory period, not at the time the court quiets title in the easement.
47. Funk and his successors have used the property previously owned by Idaho Forest Industries in Section 28 for a period longer than the statutory period.
48. An easement by necessity exists for Capstar.

49. An easement by necessity exists for Spectra Site.

DATED this 4th day of June, 2013.

JAMES, VERNON & WEEKS, P.A.



Susan P. Weeks
Attorney for Plaintiff Spectra Site L.L.C.

JAMES, VERNON & WEEKS, P.A.



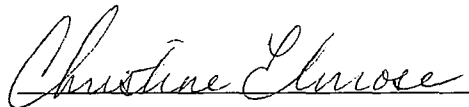
Cynthia K.C. Meyer
Attorney for Plaintiff Capstar Radio Operating Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of June, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Douglas Marfice
Theron J. DeSmet
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Coeur d'Alene, ID 83816
Fax: (208) 664-5884

- | | |
|-------------------------------------|------------------------------|
| <input type="checkbox"/> | U.S. Mail |
| <input checked="" type="checkbox"/> | Hand Delivered |
| <input type="checkbox"/> | Overnight Mail |
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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 6/4/13
AT 0 O'CLOCK M
CLERK, DISTRICT COURT
DEPUTY

Attorneys for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff/Counterdefendant,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants.

SPECTRA SITE COMMUNICATIONS, LLC,
a Delaware limited liability company,

Plaintiff/Counter Defendant,

vs.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants,

And JOHN DOES 1-6, Third Party Defendants.

Case No. CV-02-7671

Case No. CV-03-4621

**DEFENDANTS' PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

COME NOW Defendants/Counterclaimants, and submit their proposed Findings of Fact
and Conclusions of Law in accordance with this Court's Pretrial Order.

This is an easement dispute. The issue before the Court on the first phase of trial is: Whether Plaintiffs Capstar Radio Operating Company (“Capstar”) and Spectrasite Communications, LLC (“Spectrasite”) hold easements over property owned by Defendants Douglas and Brenda Lawrence (the “Lawrences”).

PROPOSED FINDINGS OF FACT

1. The Lawrences are the fee simple owners of three parcels of real property on Blossom Mountain described as the Northeast Quarter of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter and the East half of the Southeast Quarter of the Southeast Quarter of Section 21, Township, 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho (the “Lawrence Property”).

2. In 1969, Harold and Marlene Funk (the “Funks”) purchased a large tract of real property on Blossom Mountain consisting of land in parts of Section 15, Section 21 and Section 22, in Kootenai County, Idaho (the “Funk Property”). The original Funk Property contained the parcels of property now owned by the Lawrences and Capstar and a parcel leased by Spectrasite, which are relevant to this action.

3. In 1966, the General Telephone Company, (“GTC”) obtained an express easement to access one acre of land located in Section 22. GTC’s easement was over a private road owned by Wilber Mead (“Mead”). The road crossed over the southwest quarter of Section 21 (the “Mead Property”), then went south into the north half of Section 28, where it turned northeast and entered (what is now) the Lawrence Property and then into the southwest quarter of Section 22 near what is now the Capstar Property.

4. This private road is sometimes called “Blossom Road” or “West Appleblossom Road.”

5. In 1975, the Funks severed what is now the Lawrence Property from the Funk Property and sold it to Human Synergistics.

6. From there, the chain of title to the Lawrence Property is as follows: Human Synergistics to Johnson & McHugh; Johnson & McHugh to National Associated Properties (“NAP”); NAP to the Farmanians; and the Farmanians to the Lawrences.

7. The Lawrences purchased the Lawrence Property in July of 1996. The only express easement identified at the time of Lawrences’ purchase of the Lawrence Property was the GTC easement.

8. Capstar became the owner of real property on Blossom Mountain in Kootenai County, Idaho, described in **Appendix “A”** attached hereto (the “Capstar Property”).

9. In 1989, the Funks severed what is now the Capstar Property from the Funk Property and sold the Capstar Property to Kootenai Broadcasting, Inc.

10. From there, the chain of title to the Capstar Property is as follows: Kootenai Broadcasting to Rook Broadcasting; Rook Broadcasting to AGM; and AGM to Capstar. Capstar purchased the Capstar Property in 2000. On March 31, 2011, Capstar conveyed the Capstar Property to SpectraSite Communications, LLC (not to be confused with Plaintiff Spectrasite).

11. Mark Hall and Robert Hall are the owners of a parcel of real property located in the Southwest Quarter of Section 22, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho (“Hall Property”).

12. On August 26, 1976, the Funks severed the Hall Property from the Funk Property and sold the Hall Property to John Rasmussen and Neil Chamberlin.

13. From there, the chain of title to the Hall Property is as follows: Rasmussen/Chamberlin to James and Teresa Van Sky; Van Sky to Switzer Communications, Inc.; Switzer Communications, Inc. to Term Corp.; and Term Corp. to Mark Hall and Robert Hall.

14. Before selling it to Human Synergistics, the Funks owned the Lawrence Property from 1969 to 1975. During this time, the Funks visited the Funk Property infrequently to pick huckleberries and for target practice.

15. After the Funks severed the Lawrence Property and sold it to Human Synergistics in 1975, the Funks moved to Aberdeen, Washington and only visited the remaining Funk Property on two or three occasions.

16. Wilbur Mead, a neighboring property owner, had no knowledge of the Funks use of the Funk Property for any purpose.

17. In 1975, at the time of severance of the Lawrence Property from the Funk Property, Mellick Road (a public road) provided access to portions of Blossom Mountain. Mellick Road extended to the Funk Property in Section 15 (directly North of Section 22). The Funk Property in Section 15 was contiguous to the Funk Property located in Section 22, thus the Funks had access to their property holdings on Blossom Road via a public road.

18. In 1975, an old logging road extended from the Funk Property in Section 22 to Mellick Road in the Northeast Quarter of Section 21, which was not owned by the Funks. The Funks could have redirected the logging road to connect to Mellick Road in the Funks' Section 15 Property. The time and expense associated with redirecting the logging road to provide such access would have been reasonable. (In fact, John Mack later did redirect the logging road to connect to Mellick Road and provide access to his property in Section 22. Mack's property

surrounds what is now the Capstar Property.)

19. In 1989, the Funks severed the Capstar Property from the Funk Property and sold the Capstar Property to Kootenai Broadcasting. Kootenai Broadcasting was owned by John Rook. Kootenai Broadcasting then transferred the Capstar Property to Rook Broadcasting, which then sold the Capstar Property to AGM in 1998. While the Capstar Property was owned by Kootenai/Rook, the companies' agents accessed the Capstar Property via Blossom Mountain Road. Kootenai/Rook either had permission to use Blossom Mountain Road or they used the Road under the belief that the companies had permission to use Blossom Mountain Road.

20. Mark Hall and Robert Hall leased a telecommunications site on the Hall Property to Nextel West Corp.

21. On November 3, 1997, the Lawrences entered into an access license agreement with Nextel West Corp. The access license agreement allowed the Nextel West Corp. to travel across the Lawrence Property to access its telecommunications lease site on the Hall property. In January of 2003, Nextel West Corp. assigned the access license agreement to Tower Asset Sub, Inc. Tower Asset Sub, Inc. subsequently assigned the access license agreement to Spectrasite.

22. From November of 1997 to April of 2007, the Lawrences received monthly payments under the access license agreement from its assignee(s). Since May 2007, Spectrasite has not made monthly payments to the Lawrences pursuant to the access license agreement.

23. Since May 2007, Spectrasite and Capstar have continued to use the Lawrence Property to access their respective telecommunications equipment.

24. From 1997 to present, Spectrasite and Capstar have authorized or directed other persons to travel across the Lawrence Property.

CONCLUSIONS OF LAW

A. Easement by Implication.

- An easement by implication requires a showing of (1) unity of title and subsequent separation by grant of the dominant estate; (2) apparent continuous use of an access; and (3) reasonable necessity for an easement. *Capstar Radio Broadcasting Company v. Lawrence*, 153 Idaho 411, 416, 283 P.3d 728, 733 (2012); quoting, *Bob Daniels & Sons v. Weaver*, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (1984). Implied easements are not favored by courts because they are in derogation of the rule that written instruments speak for themselves. *Cordwell v. Smith*, 105 Idaho 71, 77, 655 P.2d 1081, 1087 (1983); citing, *Davis v. Gowen*, 83 Idaho 204, 360 P.2d 403 (1961).

The Plaintiffs have satisfied the first required element for an easement by implication. The Funks originally held title to a larger tract of land which encompassed the Lawrence Property, Capstar Property and Hall Property. And, the Funks eventually separated the subject Properties from the larger tract. However, Plaintiffs have failed to carry the burden of demonstrating the second and third elements required for an easement by implication.

- The apparent and continuous use required for an easement by implication is measured from the point unity of title is severed and a possessory interest is created in the severed parcel. *Capstar* at 417, 734; citing, *Bays v. Haven*, 55 Wash.App. 324, 777 P.2d 562, 564 (1989). The Lawrence property was severed in 1975, when the Funks entered into a sales contract with Human Synergistics. *Capstar* at 417, 734.

- Apparent and continuous use requires a showing of use that would be apparent to the outside world. *Capstar* at 418, 735.¹

Plaintiffs argue that Funks' use of Blossom Mountain Road was apparent and continuous prior to 1975. The evidence does not support this.

- Harold Funk (deceased) testified (via deposition) that he purchased the Funk Property in 1969. Funk severed the Lawrence Property portion of his larger tract and sold it to Human Synergistics in 1975. Mr. Funk testified that during this six year period of time, the Funks visited the remainder of the Funk Property infrequently (approximately 20 to 30 times) for the purpose of picking huckleberries and target practice.

- Wilber Mead (deceased) testified (via deposition) that he had no knowledge of Mr. Funk's use of the property. Plaintiffs did not present any other evidence of the Funks use of the Funk Property between 1969 and 1975.

- Funks use of the Funk Property was not apparent to the outside world and, therefore, does not constitute an apparent continuous use necessary for an implied easement.² For this reason, Plaintiffs' easement by implication claim fails.

- "The party seeking to establish the easement [by implication] must prove reasonable necessity." *Capstar* at 417, 734. "Reasonable necessity is something less than the great and present necessity required for an easement implied by necessity." *Id.*; citing, *Davis v.*

¹ Citing, *Thomas v. Madsen*, 142 Idaho 635, 638, 132 P.3d 392, 395 (2006) (Finding use of a driveway apparent); *Akers v. DL White Const., Inc.*, 142 Idaho 293, 302, 127 P.3d 196, 205 (2005) (Finding "regular use" to be required); *Davis v. Peacock*, 133 Idaho 637, 641, 991 P.2d 362, 366 (1999) (Required open and continuous use to "ensure [] that the buyer of the servient property will have notice of the preexisting use").

² See, *Bear Island Water Ass'n v. Brown*, 125 Idaho 717, 725, 874 P.2d 528, 536 (1994) (Finding no apparent continuous use where a well was drilled but not used before separation); *Close v. Rensink*, 95 Idaho 72, 77-78, 501 P.2d 1383-89 (1972) (Finding use of access roads was limited and diminished further after sale); see also, *Cordwell v. Smith*, 105 Idaho 71, 78, 665 P.2d 1081, 1088 (Ct.App. 1983) (Holding use by other parties to be insufficient to establish apparent continuous use).

Peacock, 133 Idaho 637, 642, 991 P.2d 362, 367 (1999). Plaintiffs assert that use of the road across the Lawrence Property was necessary for the Funks to access their remaining property in Section 22. This proposition is not supported by the evidence. The Funks were able to access their Section 22 property via Mellick Road, a public road, which extended to the Funks' contiguous property in Section 15.

Because the public road access (Mellick Road) did extend to the Funks Property in Section 15 which was contiguous to Funks Property located in Section 22, Funks could have accessed their Section 22 property via Mellick Road. Thus, the Funks had no reasonable necessity to use the Blossom Mountain access road.

- Even if Mellick Road did not extend all the way to Funks Section 22 property, a logging road extending from Mellick Road could have provided direct access to the Funks Section 22 property, or alternatively could have been redirected, with minimal effort, to extend into the Funks Section 22 property.

- At the time of Funks ownership, a logging road existed from the point where Mellick Road ended in Section 15, leading into to the Northeast Quarter of Section 21. The logging road did not extend to Funks Property in Section 22 and that the logging road was over grown and in somewhat poor condition, but it still existed. “[A] property owner cannot create a necessity through his or her own actions.” *Capstar* at 418, 735; citing, *B & J Dev. & Invs., Inc. v. Parsons*, 126 Idaho 504, 507, 887 P.2d 49, 52 (Ct.App. 1994). The logging road could have been improved and redirected a short distance to extend into Section 22 property. At some point, John Mack actually did connect the logging road to Mellick Road in order to access Mack’s property in Section 22. Because the Funks could have redirected the logging road to

provide access to their Property, and the time and expense required to do so would not be unreasonable, the use of the Blossom Mountain access road was not reasonably necessary.

For the foregoing reasons, Plaintiffs have failed to prove the required elements for an easement by implication. Plaintiffs do not have an easement by implication to cross the Lawrence Property.

B. Easement by Necessity.

- An easement by necessity requires (1) unity of ownership prior to division of the tract; (2) necessity of an easement at the time of severance; and (3) great present necessity for the easement. *Capstar* at 419, 736; quoting, *Bob Daniels & Sons* at 542, 1017.

- If an alternate access exists, even one which is expensive or inconvenient, then an easement by necessity must not be granted. The requirement of necessity does not mean that there must be access to all portions of a parcel or that there be the most convenient access possible. *Capstar* at 419, 736.

“Reasonable necessity” in the context of an easement by implication is a lower standard than the necessity showing required for an easement by necessity. *Bear Island Water Ass’n, Inc. v. Brown*, 125 Idaho 717, 725, 874 P.2d 528, 536 (1993). Plaintiffs have not demonstrated the “great present necessity for an easement” required to obtain an easement by necessity. *Capstar* at 419, 736. Plaintiffs do not have an easement by necessity to cross the Lawrence Property.

Even if plaintiffs had established an easement by necessity, such necessity no longer exists. “...An easement by necessity continues only as long as the need exists.” *Bob Daniels & Sons*, at 542, 1017. Mr. Lawrence and Mr. Mack testified (via affidavit) that the Lawrence Property can be accessed by other means, namely Mellick Road and roads constructed by Mr.

Mack. Thus, even if plaintiffs had proven it was absolutely necessary, or even reasonably necessary to use Blossom Mountain Road to access the Lawrence Property at the time of severance, such necessity no longer exists and plaintiffs claim for an easement by necessity fails.

C. Easement by Prescription.

- In order to establish an easement by prescription, a claimant must prove use of the subject property that is (1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the owner of the servient property (5) for the statutory period of five years. *Capstar* at 420, 736; quoting, *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006).

- “It is no trivial thing to take another’s land without compensation, easements by prescription are not favored by the law.” *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2005); quoting, *Simmons v. Perkins*, 63 Idaho 136, 143, 118 P.3d 740, 744 (1941); *Backman* at 396, 81; citing *Elder v. NW Timber Co.*, 101 Idaho 356, 358, 613 P.2d 367, 369 (1980).

In establishing an easement by prescription the plaintiff carries the burden of demonstrating each of the five elements by reasonably clear and convincing evidence. *Backman v. Lawrence*, 147 Idaho 390, 396, 210 P.3d 75, 81 (2009); citing *Roberts v. Swim*, 117 Idaho 9, 12, 784 P.2d 339, 342 (Ct.App. 1989). Ordinarily, once a plaintiff has carried such burden, “[t]he burden then shifts to the owner of the servient estate to demonstrate that the claimants’ use was permissive.” *Hodgins v. Sales*, 139 Idaho 225, 232, 76 P.3d 969, 976 (2003). However, “[t]his presumption does not apply where the claimed easement is over wild and

unenclosed lands.” *Id.* “Rather, where the easement alleged is over wild and unenclosed lands, there is a rebuttable presumption that use of such lands is permissive, and the burden is on the party asserting the easement to establish adversity.” *Id.*; citing *Marshall v. Blair*, 130 Idaho 675, 680, 946 P.2d 975, 980 (1997). Mr. Lawrence testified that the Lawrence Property over which the plaintiffs claim an easement is not fenced or otherwise enclosed and lies in rather forested areas. The Lawrence Property is wild and unenclosed land. As a result, plaintiffs have the added burden at trial of proving, by reasonably clear and convincing evidence, that the use upon which the easement theory is based was adverse. Plaintiffs have failed to carry this burden.

Plaintiffs claim a prescriptive easement based upon the Funks’ use of the access road from 1975 (when Funk severed what is now the Lawrence Property and sold it to Human Synergistics) to 1981 and Kootenai Broadcasting/Rook’s use of the road beginning in 1989 when Kootenai Broadcasting/Rook purchased the Capstar Property.

The relevant “prescriptive period” for the Funks’ use of the access road is 1975 to 1981. *Capstar* at 420, 737. Between 1975 and 1981, Funk lived in Aberdeen, Washington and only visited the Property on two or three occasions. Funk did not visit the Property after 1981 and sold the remaining portion of the Funk Property in 1989. Funks “... limited use of the easement road does not constitute open and continuous use.” *Capstar* at 421, 738. For this reason, Plaintiffs’ prescriptive easement theory based upon Funks’ use fails and this Court need not address the remaining elements required for a prescriptive easement.

John Rook was the owner of Kootenai Broadcasting, which purchased the Capstar Property from the Funks. Rook was also the owner of Rook Broadcasting which succeeded in interest to the Capstar Property from Kootenai Broadcasting. Between 1989 and 1998, when

Rook's companies owned the Capstar Property, those companies maintained radio telecommunications equipment on the Capstar Property. During this period, Rook and other representatives of the companies accessed the Capstar Property via the Blossom Mountain access road. This access was permitted.

Idaho law is well settled; an easement by prescription cannot arise when "the use was permissive, or by virtue of a license, contract or agreement." *West v. Smith*, 95 Idaho 550, 557, 511 P.2d 1326, 1333 (1973); see also, *Marshall v. Blair*, 130 Idaho 675, 680, 947 P.2d 975, 980 (1997) (holding "[a] prescriptive right cannot be granted if the use of the servient tenement was by permission of its owner; because the use, by definition, was not adverse to the rights of the owner).

Mr. Rook's use of the Blossom Mountain access road and that of his companies' representatives was a permissive use. A permissive use cannot give rise to a prescriptive easement. No prescriptive easement exists.

Plaintiffs have failed to prove the existence of a prescriptive easement by reasonably clear and convincing evidence. Plaintiffs do not have a prescriptive easement to cross the Lawrence Property.

DATED this 4th day of June, 2013.

RAMSDEN & LYONS, LLP

By: 

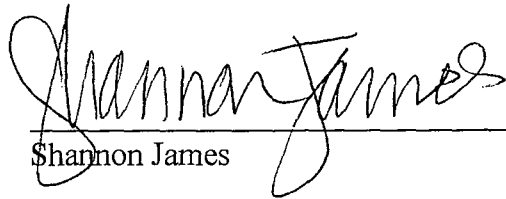
Theron J. De Smet, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2013, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

☐ US Mail
☐ Overnight Mail
☒ Hand Delivered
☐ Facsimile (208) 664-1684


Shannon James

APPENDIX "A"

A parcel of land as referenced in the Warranty Deed filed as Instrument Number 156152, Records of Kootenai County, said parcel located in the Southwest Quarter, Section 22, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at an aluminum capped monument marking the southwest corner, said Section 22, from which a brass capped monument marking the south quarter corner, said Section 22, bears S 89°42'31" E A distance of 2628.33 feet; thence, N 66°21'00" E A distance of 932.27 feet to an iron pipe monument marking the southwesterly corner of said deed parcel. The true point-of beginning for this description.

Thence, N 13°37'25" W along the west line of said parcel a distance of 365.98 feet (N13°37' W 365.96 feet, deed) to the northwesterly corner thereof;

Thence, N 76°21'14" E along the north line of said parcel a distance of 594.87 feet (N 76°22' E 595.09 feet, deed) to the northeasterly corner thereof;

Thence, S 13°39'47" E along the east line of said parcel a distance of 366.22 feet (S 13°37' E 366.09 feet, deed) to the southeasterly corner thereof;

Thence, S 76°22'38" W along the south line of said parcel a distance of 595.13 feet (S 76°23' W 595.09 feet, deed) to the true point-of-beginning.

Said described parcel contains 5.00 acres (217,829.4 square feet), more or less.

Together with a 20-foot right-of-way to construct a road from the existing road to the above-described parcel.

Also, together with a right-of-way for utilities, running from the existing power box, in the SE ¼ of Section 21, Township 50 North, Range 5 West, Boise Meridian to the above-described property.

"Capstar Property"

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 77c

2013 JUN -7 PM 1:25

CLERK DISTRICT COURT

DEPUTY 

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ISB #4255

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

SECOND AMENDED EXHIBIT
LIST

COMES NOW Plaintiff, by and through its attorneys of record, James, Vernon & Weeks, P.A. and hereby submit its First Amended Exhibit List as required by the Court's scheduling order in the form attached hereto. In addition to the exhibits listed, Plaintiff may use any exhibit contained on Defendants' Exhibit List.

DATED this 7th day of June, 2013.

JAMES, VERNON & WEEKS, P.A.

By 
SUSAN P. WEEKS

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

☐

U.S. Mail

☐

Overnight Mail

☒

Hand Delivered

☐

Telecopy (FAX)

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700 Northwest Blvd.
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Coeur d'Alene, ID 83816
Fax: (208) 664-5884

Susan P. Weeks

PLAINTIFF'S EXHIBITS

CASE NO.: CV-02-7671

TRIAL DATE: June 11, 2013

CASE TITLE: CAPSTAR RADIO v. LAWRENCE

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
1	Illustrative depiction of Sections 15, 22 and 21					
2	Real Estate Sales Contract, filed in Book 55, Page 118 on August 28, 1968, Reynolds to Raden					
3	Real Estate Contract, filed in Book 57, page 119, Raden to Funk, April 14, 1969					
4	Warranty Deed filed as Instrument No. 613471 Mead to Funk, November 9, 1972					
5	Sale Agreement Instrument No. 672112 Funk to Human Synergistics, Inc. July 10, 1975					
6	Sale Agreement Instrument No. 672113 Funk to Human Synergistics, Inc. July 10, 1975					
7	Sale Agreement Instrument No. 672114 Funk to Human Synergistics, Inc. July 10, 1975					
8	Sale Agreement Instrument No. 672115 Funk to Human Synergistics, Inc. July 10, 1975					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
9	Sale Agreement Instrument No. 672116 Funk to Human Synergistics, Inc. July 10, 1975					
10	Sale Agreement Instrument No. 672117 Funk to Human Synergistics, Inc. July 10, 1975					
11	Sale Agreement Instrument No. 672118 Funk to Human Synergistics, Inc. July 10, 1975					
12	Statutory Warranty Deed Instrument No. 653865 Rynolds to Raden and Marcoe, signed April 15, 1974, recorded July 25, 1974					
13	Statutory Warranty Deed Instrument No. 653864 Raden and Marcoe to Funk, Signed April 11, 1974, recorded July 25, 1974					
14	Memorandum of Contract, filed on as Instrument No. 732027 Human Synergistics to Johnston and McHugh Signed May 16, 1977, recorded June 1, 1977					
15	Roadway Easement Inst. No. 773361, IFI to Johnston and McHugh signed July 11, 1977 recored July 6, 1978					
16	Memorandum of Sale Agreement Inst. No. 1098895, Johnston and McHugh to NAP, signed					

	July 3, 1987, recorded October 13, 1987					
NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
17	Corporation Deed Inst. No. 1114689, Human Synergistics to Johnston and McHugh, signed May 16, 1977, recorded April 21, 1988					
18	Warranty Deed Inst. No. 1279685, Funk to Mack, October 22, 1992					
19	Warranty Deed Inst. No. 1283911, Funk to Human Synergistics, signed October 29, 1992, recorded November 29, 1992					
20	Deed Inst. No. 1452670 NAP to Farmanian July 3, 1996					
21	Corporation Deed Inst. No. 1452959, NAP to Farmanian, July 8, 1996					
22	Easement Inst. No. 1454068, NAP to Other Property, July 16, 1996					
23	Mutual Agreement Grant of Easement and Quit Claim Deed Inst. No. 1462711, Farmanian to Mack, September 20, 1996					
24	Memorandum of Sale Agreement Inst. No. 1464206, Farmanian to Lawrence, signed July 12, 1996, recorded October 1, 1996					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
25	Quitclaim Deed Inst. No. 1533768, Lawrence to Lawrence, April 17, 1998					
26	Quitclaim Deed Inst. No. 1543875, Lawrence to Lawrence, June 29, 1998					
27	Warranty Deed Inst. No. 1551840, Johnston and McHugh to NAP, signed July 16, 1996, recorded August 27, 1998					
28	Warranty Deed Inst. No. 1551841, Farmanian to Lawrence, signed July 5, 1996, recorded August 27, 1996					
29	Deed Inst. No. 720411, Funk to Rasmussen and Chamberlain, signed August 26, 1976, recorded January 7, 1977					
30C	Warranty Deed Instrument No. 1161438 and re-recorded as Instrument No. 1167510 Funk to Idaho Broadcasting, September 25, 1989					
31C	Quitclaim Deed Instrument No. 1168384, Idaho Broadcasting to Kootenai Broadcasting, November 29, 1989					
32C	Quit Claim Deed Instrument No. 1326440 Kootenai Broadcasting to Rook Broadcasting, October 25, 1993					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
33C.1	Warranty Deed Instrument No. 1565152, Rook Broadcasting to AGM-Nevada, November 20, 1998					
33C.2	Warranty Deed Instrument No. 1656413 AGM-Nevada to Capstar October 25, 2000					
34	Chicago Title Insurance Company Policy No. 13 0035 106 00001140					
35	Deed Inst. No. 708987 Funk to Kootenai Electric Cooperative August 16, 1976					
36	Deed Inst. No. 993113 Funk to Sonneland November 29, 1984					
37	Warranty Deed Inst. No. 497858, Reynolds to General Telephone October 17, 1966					
38	Right of Way Easement Inst. No. 494343, Blossom and Mead to General Telephone, signed July 14, 1966, recorded August 31, 1966					
39	Right of Way Easement Inst. No. 494344, Ulrich to General Telephone, August 31, 1966					
40	Blossom Mountain Estates Plat Book I, Page 42					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
41	Record of Survey Inst. No. 15421875					
42	Kootenai County Assessor Office Segregation Revisions Section 22					
43	Kootenai County Assessor Office Segregation Revisions Section 21					
44	GLO Survey of Township 50 No, Range No. 5 West					
45	Blow up of GLO map in Section 15, 21 and 22					
46	1957 USGS Historical Map of Sections 15, 21 and 22					
47	1959 Metsker Map					
48	Mellick Road Exhibit Map					
49	1981 USGS map of 1975 aerial					
50	Funk Ownership Exhibit					
51	2010 USGS map					
52	Viewer's Report Exhibit					
53	Viewer Report 271 and branch change Mellick Road					
54	Mack Affidavit					
55	Deed Inst. No. 1558483 Zuber to Zuber September 11, 1998					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
56	Deed Inst. No. 1758296 Zuber to Mack October 9, 2002					
57	Mellick Road Overlay					
58	Mellick Road Overlay					
59	Conditional Use permit C-593-86					
60	Conditional Use Permit No. C-658-88					
61	Conditional Use Permit No. C-686-89					
62	Conditional Use Permit No. C-841-94					
63	Conditional Use Permit No. C-940-97					
64	Conditional use Permit No. C-1058-01					
65	Conditional Use Permit No. C-1092-03					
66	Notice Inst. No. 1403054					
67	Civil Violation No. CV- 4306.06.B					
68	Harold Funk deposition					
69	Gate Picture					
70	Gate Picture					
71	Gate Picture					
72	Gate Picture					
73	Gate Picture					
73A	Lock Picture					
74	Sims Liesche 3/19/99 letter of County Officials					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
75	2/29/00 Lawrence letter to Douglas					
76	5/31/99 Sims Liesche Statement					
77	Lawrence 6/1/2000 submittal to Kootenai County Planning					
78	6/14/99(00) Lawrence letter to Kootenai County Prosecutor					
79	6/26/00 Lawrence letter to Kootenai County Planning Dept					
80	6/30/00 Letter to Sheriff					
81	12/5/00 Petition for Judicial Review Kootenai Case CV00-7756					
82	10/19 Verizon key letter and 11/19/01 Verizon Key Receipt					
83	6/10/03 Verizon letter to Lawrence					
84	10/10/03 Stimson letter to Lawrence					
85	Great Northern Broadcast Access License Agreement					
86	Blue Sky Statement dated 2/1/02					
87	Tower License Agreement					

NO.	DESCRIPTION	BY STIP.	OFFERED	ADMITTED	REFUSED	RESERVE RULING
	ANY EXHIBIT ON DEFENDANTS' LIST					

RAMSDEN & LYONS, LLP
700 Northwest Blvd.
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Telephone: (208) 664-5818
Facsimile: (208) 664-5884
Douglas S. Marfice, ISB #4072
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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2013 JUN -7 PM 3: 50

CLERK DISTRICT COURT

[Signature]
DEPUTY *[Signature]* JB

Attorneys for Defendants/Counterclaimants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING
COMPANY, a Delaware corporation,

Plaintiff/Counterdefendant,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants.

SPECTRA SITE COMMUNICATIONS, LLC,
a Delaware limited liability company,

Plaintiff/Counter Defendant,

vs.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants/Counterclaimants,

And JOHN DOES 1-6, Third Party Defendants.

Case No. CV-02-7671

Case No. CV-03-4621

**DEFENDANTS' SUPPLEMENTAL
TRIAL EXHIBIT LIST
(CONSOLIDATED)**

COME NOW Defendants, and submit the attached *Supplemental* Exhibit List identifying the Defendants' proposed trial exhibits.

Defendants reserve the right to supplement and amend this Exhibit List prior to trial.

DATED this 7th day of June, 2013.

RAMSDEN & LYONS, LLP

By: 

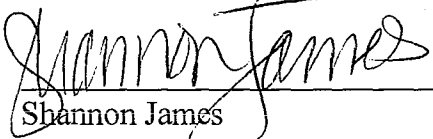
Theron J. De Smet, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2013, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

☐ US Mail
☐ Overnight Mail
☒ Hand Delivered
☐ Facsimile (208) 664-1684


Shannon James

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST

Case No: **CV-03-04621 / CV-02-7671 (Consolidated)**

Trial Date: **June 11, 2013**

Title of Cases: *Tower Asset Sub, Inc. v. Lawrence*
Capstar Radio Operating Company v. Lawrence

____ PLAINTIFF'S EXHIBITS (list numerically)

X DEFENDANT'S EXHIBITS (list alphabetically)

NO.	DESCRIPTION	BY STIP.	OFFERED	RECEIVED	REFUSED	RESERVE
A	Warranty Deed-Lawrence					
B	Access License Agreement between Nextel West Corp and Douglas and Brenda Lawrence					
C	Assignment of Leases – Deposition Exhibit 4 from the Deposition of Thomas Martinich					
D	Certificate of Merger – Deposition Exhibit 5 from the Deposition of Thomas Martinich					
E	Communications Lease Agreement – Deposition Exhibit 3 from Deposition of Thomas Martinich					
F	Statement signed by Don Snodgrass on May 8, 2000					
G	May 8, 2000 statement referenced in incident report 00-9842					
H 1 - 7	Kootenai County Sheriff's Incident Reports filed against Douglas Lawrence (2000-2002; 7 total)					
I	April 13, 2002 SpectraSite Letter noticing Defendants of renewal of License Agreement					
J	August 28, 2002 Kootenai Electric Letter requesting to lock Defendant's gate					
K	October 10, 2002 signed acknowledgment of receipt of key by Nextel employee Jim Hollis					

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST - 1

L	October 17, 2002 delivery confirmation of key to Tom Grapenster with AT&T					
M	October 16, 2002 signed receipt of key to Adelphia					
N	October 9, 2002 signed receipt of key to Kootenai Electric					
O	October 9, 2002 signed receipt of key to Verizon					
P	October 15, 2002 email from Shelia Bernard (SpectraSite) to Douglas Lawrence – Subject [RE: Blossom Mountain Access Agreement]					
Q	October 15, 2002 email from Shelia Bernard - Subject [Attention Doug]					
R	October 21, 2002 email from Pamela Waitman (Nextel) – Subject [Blossom Mtn cell site access]					
S	October 24, 2002 undeliverable letter to Nextel Communications					
T	October 24, 2002 returned (unaccepted) delivery confirmation					
U	October 31, 2002 letter from Raymond Goodwin (SpectraSite) to Defendants					
V 1 - 7	Kootenai County Sheriff's Crime Reports 2002 - 2003 by Douglas Lawrence (2002-2003; 7 total)					
W	January 13, 2003 Letter from Raymond Goodwin (SpectraSite) to Defendants					
X	January 9, 2003 Letter from Nextel noticing Defendants of assignment					
Y	Envelope of March 14, 2003 Letter from Nextel					
Z	Defendant Mack's Affidavit in Support of Defendants Lawrences' Motion in Opposition to Plaintiff's Motion for Leave to Amend Complaint to Include Punitive Damages					
AA	Kootenai County Sheriff's Crime Report 03-21559 filed September 16, 2003 by Douglas Lawrence					
BB	Check receipt for April 2007 payment for license agreement					
CC	April 16, 2007 Letter from American Tower offering lump sum payment					

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST - 2

DD	July 18, 2007 Notice of Default sent to American Tower					
EE	Delivery confirmation of July 18, 2007 notice of default					
FF	Kootenai County Sheriff's Department Law Incident Table showing incident 07-23671					
GG	License Agreement between Tower Asset Sub Inc and Infinity Communications					
HH	Tower Attachment License Agreement between Tower Asset Sub Inc and Wired or Wireless, Inc.					
II	Site Schedule to the Master Site Lease Agreement dated April 20, 1999					
JJ	Affidavit of James Stillinger provided in CV03-5003					
KK	Record of Road and Gate Locations in Parcel 21-8500					
LL	November 17, 2000 Business correspondence between Colby May and John Rook and copied to Defendants					
MM	Antenna Tower Building and Real Property Lease Agreement between John Rook and Trinity Broadcasting Network					
NN	Lease agreement between Adelphia Cable and John Mack and the Defendants					
OO	March 13, 2000 affidavit of Wilber Mead					
PP	February 1, 2002 Statement from Blue Sky Broadcasting					
QQ	Access License Agreement between Great Northern Broadcasting and the Defendants					
RR	Copy of Metsker Map dated March 1959					
SS	June 28, 2007 Affidavit of Kootenai County Surveyor Bruce Anderson					
TT	1907 Viewers report for Mellick Road					
UU	June 17, 1910 Plat of Survey for Mellick Road					

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST - 3

VV	July 1977 Easement Idaho Forest Industries granted to Don Johnson and John McHugh and recorded as instrument #773361.					
WW	August 13, 2007 Deposition Transcript of Harold Funk					
XX 1 - 3	Aerial Photographs of Subject Area by Kootenai County KCWebMap (3 total)					
YY 1 - 5	Aerial Photographs of Subject Area by GoogleEarth (5 total)					
ZZ	Affidavit of John Mack in Support of Defendants' Motion for Enlargement					
AAA 1 - 2	Emails from Sheila Barnard dated 10/15/2002 (2 total)					
BBB	Email from Pamela Waitman dated 10/21/2002					
CCC	Email from Scott Haug dated 10/27/2003					
DDD	Aerial Photographs of Subject Area by GoogleEarth showing roads					
EEE 1 - 32	Aerial Photographs of road system and gates in subject area (32 total)					
FFF 1 - 5	Photographs of gates on subject area roads					
GGG	Aerial view and mapping of Mellick Road					
HHH	Viewer's Report – Mellick Road					
III	Aerial Photograph of the Subject Property dated 1951					
JJJ	Aerial Photograph of the Subject Property dated 1970					
KKK	Aerial Photograph of the Subject Property dated 8-14-75					

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST - 4

STATE OF IDAHO)
County of Kootenai) ss
FILED Sept 10, 2013
AT 3:40 O'clock P M
CLERK OF THE DISTRICT COURT


Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,)
a Delaware corporation,)

Plaintiff,)

vs.)

DOUGLAS LAWRENCE and BRENDA)
LAWRENCE, husband and wife,)

Defendants.)
_____)

CASE NO. CV-02-7671

MEMORANDUM DECISION
AND ORDER

After a six-day bench trial, the determination is made that Capstar proved its claims for an implied easement and a prescriptive easement. Pursuant to the Idaho Supreme Court's pronouncement in *Capstar III*, that in addition to proving the three material elements previously required to establish an easement by necessity, a plaintiff must also prove there is a "legal right" to be able to access a public road, no easement by necessity is awarded as no "legal right" to a public road was proven. A permanent injunction is granted in favor of the plaintiff precluding the Lawrences from interfering with the easement. Capstar is found to be the prevailing party and is awarded costs.

Cynthia K.C. Meyer, JAMES, VERNON & WEEKS, P.A., represented Capstar.

Douglas Marfice and Theron DeSmet, RAMSDEN & LYONS, LLP, represented Douglas and Brenda Lawrence.

I. PROCEDURAL HISTORY

This case began on November 7, 2002, when Plaintiff, Capstar Radio Operating Company (“Capstar”), filed its Complaint seeking to (1) quiet title to an easement, and (2) permanently enjoin the Defendants, Douglas and Brenda Lawrence (“the Lawrences”), from interfering with the easement road that crosses their property.

In its Complaint, Capstar alleges that it has an easement through the Lawrences’ property on Blossom Mountain Road that allows it to access its parcel. Capstar asserts it was granted an easement across the Lawrences’ property by the Lawrences’ predecessors. Capstar set forth four easement theories: (1) Express easement; (2) Implied easement; (3) Easement by necessity; and (4) Prescriptive easement. Capstar moved for summary judgment. The trial court found there was an express easement and granted summary judgment. The Lawrences appealed.

In *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 152 P.3d 575 (2007) (*Capstar I*), the Idaho Supreme Court ruled that Capstar did not have an express easement across the Lawrences’ property. The matter was remanded for determination as to the other three theories. On remand, Capstar renewed its Motion for Summary Judgment and the trial court again granted summary judgment as to all three of the alternative theories. The trial court also struck the Lawrences’ defenses of laches and the statute of limitations. The Lawrences appealed, and in *Capstar Radio Operating Co. v. Lawrence*, 149 Idaho 623, 238 P.3d 223 (2010) (*Capstar II*), the Idaho Supreme Court dismissed the appeal because no final judgment had been entered.

A final judgment was then entered and the Lawrences appealed. In *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 283 P.3d 728 (2012) (*Capstar III*), the Idaho Supreme Court held that there were genuine issues of material fact in existence as to all three easement theories, the Court stated that “this case is highly complex and presents multiple issues of material fact which the lower court should address at trial.” *Id.* at 421, 283 P.3d at 738. The Supreme Court also affirmed the trial court’s decision to strike the affirmative defenses of laches and the statute of limitations, and removed the previous judge.

On remand, the matter was assigned to District Judge Lansing Haynes. Acting in his role as administrative judge, he assigned the case to Judge Steve Verby. On June 11, 2013, a six-day bench trial began. It concluded on June 18, 2013. The trial was combined with *Spectra Site Communications, Inc. v. Douglas and Brenda Lawrence*, Kootenai County Case No. CV-03-4621, as there were common issues, common witnesses, and the same defendants in each action. The issues tried were equitable and therefore could only be determined by the court. Other non-equitable issues for which a jury trial was demanded were bifurcated.

This court has carefully reviewed and considered the pleadings, evidence, and briefing, and now enters its Memorandum Decision and Order, which shall constitute findings of fact and conclusions of law pursuant to I.R.C.P. 52(a). Any of the following findings of fact that should be denominated as a conclusion of law shall be deemed to be a conclusion of law. Any of the following conclusions of law that should be denominated a finding of fact shall be deemed a finding of fact.

II. FACTS

A. Uncontested Pertinent Facts

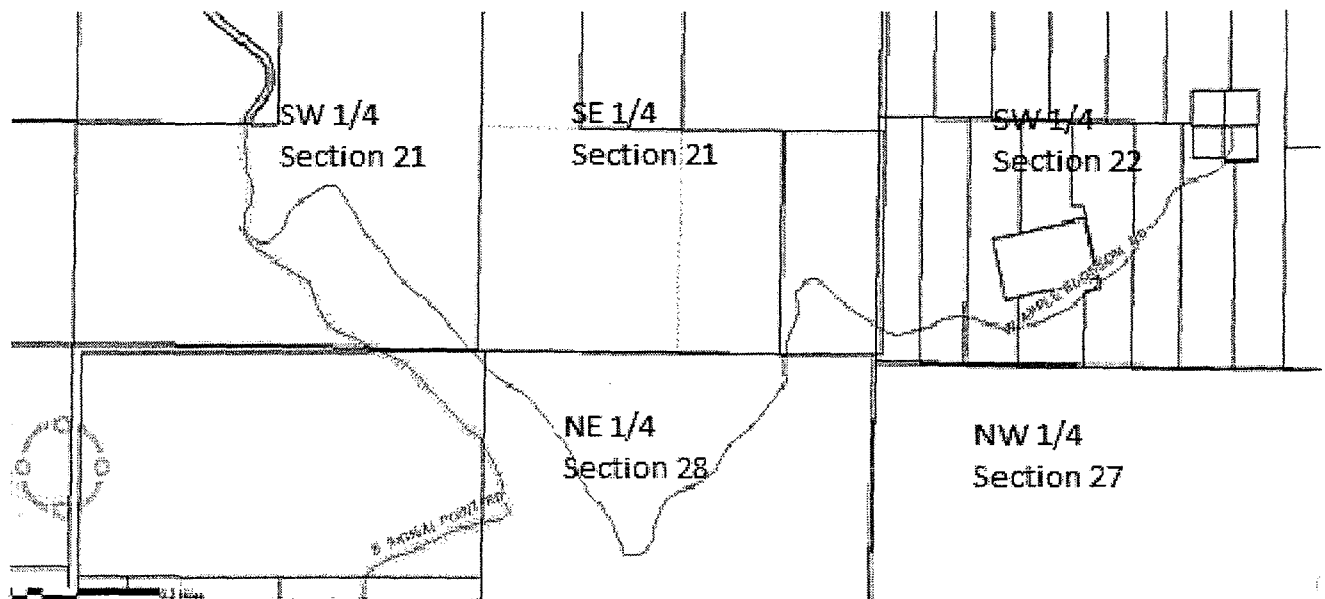
1. The Location of the Respective Parcels.

Douglas and Brenda Lawrence, and the plaintiff, Capstar, own real property on Blossom Mountain, which is located south of Post Falls, Idaho. The Lawrence parcel is located in the southeast quarter of Section 21, and the Capstar parcel is located to the east of the Lawrence parcel in the southwest quarter of Section 22. Section 21 is directly west of Section 22. Both the Lawrence parcel and the Capstar parcel were part of a larger tract of land owned by Harold and Marlene Funk. The Funks purchased their parcel in 1969 and it consisted of land in Section 15, Section 21, and Section 22. All of the real property involved in this case is located in Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho.

2. Access and History of Ownership

There was no testimony contesting the following facts, which were established by the admission of exhibits and/or the testimony of the witnesses. For ease of understanding, these facts are placed in chronological order.

The only public road providing access to the private easement road, which then accesses all of the real property which is subject to this litigation, is Signal Point Road. This easement road that connects to Signal Point Road has been referred to as Blossom Mountain Road, West Blossom Road, or Ski Hill Road. No testimony was provided that any real property owner or lessee in Section 21 or Section 22 used any other road to access their real estate. The diagram below shows the easement road that proceeds from the southwest quarter of Section 21 to the northwest quarter of Section 28 to the Southwest quarter of Section 21 to where the Capstar and Spectra Site properties are located in the southwest quarter of Section 22.



The properties involved are either directly or tangentially located near “Blossom Mountain” which is approximately two miles as the crow flies from the City of Post Falls, Idaho.

(a) The General Telephone Property

On July 14, 1966, the General Telephone Company, (“GTC”), obtained an easement to access an acre of land in Section 22 (not the Capstar parcel) over a private road owned by Glenn

D. Blossom and Ethel Blossom that crossed the southwest quarter of Section 21 (Blossom's property), then moved south and entered the north half of Section 28 where it eventually turned northeast and entered the adjacent section in the southeast quarter of Section 21 (over what is now the Lawrence parcel). It proceeded from Section 21 into the southwest quarter of Section 22 (near the Capstar parcel). The easement included a condition that GTC was to erect a swing gate on the property.

In order for GTC to obtain access through Section 28, on August 18, 1966, William C. Ulrich and Edna M. Ulrich granted GTC an easement across their real property in Section 28. The terms of the easement required GTC to construct "two steel swinging type gates." A few months later, on October 16, 1966, GTC bought real property in Section 22 for the purposes of communication transmissions.

(b) The Funk Property

In 1969, Harold and Marlene Funk entered into a real estate contract to purchase:

Parcel A: Government Lot 3, Section 15;

Parcel B: The Southeast Quarter of Section 21;

Parcel C: Government Lot 4, Section 22;

"Southwest quarter, Northwest quarter, and Southeast quarter, Section 22, all in Township 50 North, Range 5 west, Boise Meridian." (See Plaintiff's Exhibit 3).

Excepted from the property under contract to the Funks was the real property that was previously conveyed in Section 22 to GTC in 1966.

On November 7, 1972, Wilber and Florence Mead and Ethel Blossom conveyed an easement for ingress and egress across the Blossom/Meads' real property for the benefit of all the land the Funks were purchasing. (See Plaintiff's Exhibit 4).

The Funks decided to sell the bulk of their real property to a company named Human Synergistics in 1975. On July 10, 1975, seven agreements were recorded which reflected the contracts for sale of separate parcels of all of the Funks real property in Section 21 and Section

15 as well as most of the real property in Section 22 except for the Southeast quarter of section 22 which was retained by the Funks.

In each of the seven contracts the language set forth below was included:

5. Subject to and including an ingress egress easement over this and adjoining property, in Said Sections 21 and 22 owned by the grantor and including an ingress egress easement over portions of Section 21 heretofore granted to the grantors. Said easement shall be over existing roads until such time as all record owners shall agree to the relocation, improvement and/or abandonment of all or any portions of any roads. This easement is also over similar lands in section 15.

(See Plaintiff's Exhibits 5-11).

From the lack of evidence presented, it is inferred that at the time these real estate contracts for the purchase and sale of real property were executed, no fulfillment deeds were signed.

The Funks moved out of the area and by 1986 were living in American Falls, Idaho. That same year, Mr. Funk applied for a Conditional Use Permit from Kootenai County in order to install and operate an F.M. broadcast transmitter and tower facility for radio station KCDA. He listed the access to the site as using Signal Point Road (See Plaintiff's Exhibit 59). The Kootenai County Board of Commissioners approved the conditional use permit and found that: The proposed tower would be 280 feet tall and that the legal requirements for notification of adjacent property owners had been made for this proposed use on the Funks' segregated five acre parcel.

In 1988, Harold Funk requested another Conditional Use Permit to build a 40-foot tower for microwave and cable television. He listed the "Directions To Site" as using Signal Point Road and then traveling over the gravel dirt road (Blossom Mountain Road) (See Plaintiff's Exhibit 60). This site was described as being 50 feet by 200 feet and bordering the existing GTC site. The Kootenai County Board of Commissioners found: "4. Access is provided by a private road off the Signal Point Road." They further found that the legal requirements for provision of notice to adjacent property owners were satisfied, and that the demand for conditional use permits for Kootenai County microwave towers had substantially increased.

More than 17 years after the sales agreements with Human Synergistics were signed, on October 22, 1992, the Funks sold their remaining interest in Section 22 to John W. Mack (See Plaintiff's Exhibit 18). On October 29, 1992, the Funks signed a warranty deed in fulfillment of their contract and conveyed the southeast quarter of Section 21 to Human Synergistics. (See Plaintiff's Exhibit 19). The deed failed to reserve or except an easement for the benefit of the Funks, their successors, or assigns to provide access to the remaining property in Section 22. All of the real properties owned by the Funks, their successors, or assigns located in the southwest quarter of Section 22 were thus landlocked with no recorded easement.

On September 20, 1996, Arman and Mary Jane Farmanian, entered into a "Mutual Agreement Grant of Easement and Quit Claim Deed" with John W. Mack (See Plaintiff's Exhibit 23). In this agreement it states, "AND WHEREAS, MACK, and MACK'S predecessors in interest have used a preexisting private road traversing the most southeasterly portion of the FARMANIAN PROPERTY to gain access to the MACK PROPERTY. This private road is sometimes known as Blossom Mountain Road (hereinafter referred to as the 'ACCESS ROAD.'" (See Plaintiff's Exhibit 23).

(c) The Lawrence Property

At trial, Douglas Lawrence testified that he and his wife reviewed and signed a preliminary title commitment. The preliminary title commitment provided notice to the Lawrences that there were at least three claimed ingress/egress easements across the real property the Lawrences were purchasing. Mr. Lawrence also testified he was aware of a private road that was on the real property they were buying. He went on to state that there were exceptions listed on the title commitment and he knew the insurance company was not going to cover claims made by anyone concerning the easements identified.

On October 1, 1996, a "Memorandum of Sale Agreement" regarding the Lawrences' purchase of 80 acres located in the southeast corner of Section 21 was recorded (See Plaintiff's Exhibit 24). A warranty deed conveying title to the Lawrences was recorded August 27, 1998

(See Plaintiff's Exhibit 28). The warranty deed provided that the property was "free from all encumbrances except...easements of record or in view."

Mr. Lawrence testified that he knew the access road he used did not stop at his property's eastern boundary.

At the time the real property that eventually came into Capstar's possession was conveyed, it was landlocked and had no recorded easement.

3. Chain of Title

The essential chain of title of the Lawrence property is: Funks to Human Synergistics; Human Synergistics to Johnson & McHugh; Johnson & McHugh to National Associated Properties ("NAP"); NAP to the Farmanians; and the Farmanians to the Lawrences.

The chain of title of the Capstar property is: in 1989, the Funks severed what is now the Capstar Property from the Funk Property and sold the Capstar Property to Kootenai Broadcasting, Inc. From there, the chain of title to the Capstar Property is as follows: Kootenai Broadcasting, Inc., to Rook Broadcasting; Rook Broadcasting to AGM; and AGM to Capstar. Capstar purchased its property in 2000.

B. Mellick Road

The Lawrences assert that the improved portion of Mellick Road, which started and finished north of the Funk Property in 1975, could have been used to provide access to the southwest quarter of Section 22, where the Capstar real property is located.

The court finds that the following facts were proven. At no time did any of the owners, lessees, or witnesses state that access was available to any of the Funk property using Mellick Road in 1975 at the time the sales took place to Human Synergistics. Mellick Road, as it then existed as a developed road, did not access Section 15 in 1975. Mellick Road, even if it had been developed, would not have provided ingress and egress to any of the Funk property in Section 21 or 22 without going outside the Funk property boundaries that existed in 1975.

The Lawrences have posited that there was access to Mellick Road in 1975 from section 15. But no persuasive testimony or evidence was submitted to establish this proposition.

Mr. Lawrence did testify that on one occasion he rode with John Mack, who owned the major portion of the southwest quarter of section 22, and did eventually reach Mellick Road. This ride occurred long after 1975, however. Mr. Lawrence's testimony was imprecise and appeared clouded. His testimony did not demonstrate that access could be made to the developed portion of Mellick Road solely by using roads on what formerly was the Funks' real property. Further, Mr. Lawrence's testimony at trial was impeached by his previous testimony as well as by admitted exhibits. The bias shown by the way he testified was transparent. Mr. Lawrence was not a particularly credible witness.

Testimony and exhibits were admitted concerning the existence of Mellick Road and whether it provided access to the Funks through Section 15. After a review of the evidence presented, the court finds that the developed portion of Mellick Road did not extend to the Funk's real property in Section 15 in 1975. This factual/legal finding is based on the testimony of Darius Ruen, who was meticulous, precise, and inherently believable. Mr. Ruen's testimony was buttressed by other witness testimony. The court adopts Mr. Ruen's testimony as being wholly credible and finds that the facts to which he testified are controlling. The court further finds that those facts contradict the testimony of any defense witnesses as well as any facts testified to by Mr. Lawrence concerning access by way of Mellick Road.

III. STANDARD OF REVIEW

When the trial court's factual findings are supported by substantial and competent, though conflicting, evidence, the appellate court will not disturb such findings. *Hughes v. Fisher*, 142 Idaho 474, 479, 129 P.3d 1223, 1228 (2006). The Idaho Supreme Court gives due regard to the district court's special opportunity to judge the credibility of the witnesses who personally appear before the court. *Id.* at 479-80, 129 P.3d at 1228-29 (citing *Hodgins v. Sales*, 139 Idaho 225, 229, 76 P.3d 969, 973 (2003)). On appeal, findings of fact will be set aside only if they are

clearly erroneous. *Id.* at 479, 129 P.3d at 1228; I.R.C.P. 52(a).

A district court's determination as to whether a claimant has established a private prescriptive easement involves entwined questions of law and fact. *Id.*

Unlike the Supreme Court's review of a district court's factual findings, the Supreme Court exercises free review over a district court's conclusions of law. *Id.* at 480, 129 P.3d at 1229. In reviewing the district court's decision, the Supreme Court must determine whether the legal requirements were correctly applied for an easement to the facts found by the district court. *Id.*

IV. APPLICABLE LEGAL PRINCIPLES

Case law in Idaho has referred to two types of "implied easements," an implied easement by prior use and an implied easement by necessity. *Cordwell v. Smith*, 105 Idaho 71, 665 P.2d 1081 (Ct. App. 1983). In this memorandum decision the term "implied easement" means an implied easement by prior use. The term "easement by necessity" as used in this decision is what has previously been referred to as an implied easement by necessity.

A. Implied Easements

1. Generally, There Is No Creation of an Easement Without an Express Grant or Prescription.

"Implied easements are an exception to the general rule that easements can only be created by an express grant or prescription." 28A C.J.S. Easements § 75. Implied easements are a creature of common law. *Id.* The law does not always favor implied easements *Id.* Nevertheless, they exist as a matter of public policy because "lands should not be rendered unfit for occupancy or successful cultivation by a lack of access." *Bob Daniels and Sons v. Weaver*, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (Ct. App. 1984). The primary focus with respect to whether an implied easement should be recognized is whether the common owner, at the time of severance, actually

intended to reserve or grant an easement despite the absence of an express easement. The implication being that the grantee, aware of the existence of the quasi-easement, can reasonably expect its continuance. See 28A C.J.S. Easements § 75.

2. Tracing the History of Implied Easements in Idaho

Recognizing the general rule that conveying an interest in real property must occur by a written instrument, how does the law address the inequity which results when both parties to a land sale are aware that the original owner (the grantor) intended to have an easement transferred but did not, and the use by the original owner was such that the easement is a necessary part of his/her/its use of the remaining real property? In this hypothetical the presumption arises that it was the *intent* of the parties to provide for an easement and thus the grant of the easement is “implied” by the circumstances. This presumption conflicts with the general rule that even though the necessary easement is apparent and known to the buyer, “[the grantor] does not intend to reserve the easement on the estate thus alienated without any express reservation” *Wilton v. Smith*, 40 Idaho 81, ___, 231 P. 704, 705 (1924).

The earliest Idaho case found concerning the topic of an “implied easement” is *Wilton v. Smith*, *supra*. In *Wilton*, the Court addressed the situation where an owner of two pieces of land failed to reserve or except an easement which was necessary for the use of his remaining parcel after one piece was sold. The Court mentioned that the legal principle requiring that a grantor demonstrate his intent by reserving an easement in the conveyance is supported by “a long line of authority” *Id.* The *Wilton* decision resolved the conflict between the presumed intent of the parties under the circumstances and the general rule of law requiring an express reservation.

The *Wilton* court concluded:

[W]e think, however, that an exception to this rule arises where it is clearly shown, as in this case, that the easement is one of necessity, and it also appears that the owner of the servient

estate when he purchased the same, had full knowledge of such easement and the necessity of its use.

Id.

In reaching its decision, the *Wilton* court relied on *Cheda v. Bodkin*, 173 Cal. 7, 158 P. 1025 (1916), which found that:

Where the owner of one heritage consisting of several parts has so adapted them that one derives a benefit from the other, and transfers one of them without mention of the incidental burdens of one in respect to others, an implied understanding arises that the burdens and correlative advantages shall continue as before the separation of the title.

Id.

The *Wilton* court focused on unity of ownership, necessity, the knowledge of the easement by the owner of the servient estate, and the *intent* to convey such an easement.

Six years later, in *Johnson v. Gustafson*, 49 Idaho 376, 288 P. 427 (1930), our Supreme Court again addressed the issue of an implied easement. In *Gustafson*, the facts involved the sale of smaller pieces from a larger parcel without a specific reservation of an easement for the benefit of the grantor. There apparently was no testimony concerning the grantor's intent at the time of conveyance. Faced with conveyances that contained no easement, the court concluded:

True, an easement is defined as a right in the lands of another, and therefore one cannot have an easement in his own lands (19 C. J. p. 863), but, where the owner of an entire tract employs a part thereof so that he "derives from the other a benefit or advantage of a continuous and apparent nature, and sells the one in favor of which such continuous and apparent quasi easement exists, such easement being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication." 19 C. J. p. 914. See, also, 1 Thompson on Real Property, § 352; 9 R. C. L. p. 755, § 22; *German Savings & Loan Society v. Gordon*, 54 Or. 147, 102 P. 736, 26 L. R. A. (N. S.) 331.

Id.

The *Gustafson* court relied on Thompson's treatise on real property which outlined the

three material elements required to be proven to determine that an implied easement should be granted when there is no other evidence of *intent*:

The rule is thus stated by Mr. Thompson: "As a general rule there is no implied reservation of an easement in case one sells a part of his land over which he has previously exercised a privilege in favor of the land he retains, unless the burden is apparent, continuous, and strictly necessary for the enjoyment of the land retained." 1 Thompson on Real Property, § 356. See, also, 9 R. C. L. p. 765, § 28; 19 C. J. p. 920, § 113; Kallenburg v. Long, 39 Cal. App. 731, 179 P. 730; Cheda v. Bodkin, 173 Cal. 7, 158 P. 1025. The California cases cited seem to hold that strict necessity is not essential to establish an implied reservation.

Id.

In *Close v. Rensink*, 95 Idaho 72, 76, 501 P.2d 1383, 1387 (1972) the Court again quoted Thompson's treatise with approval as to the material elements required to establish a prima facie case for an implied easement.

In *Schultz v. Atkins*, the Court addressed the issue of *intent* and again cited Thompson's treatise when it said:

*The creation of such an easement may 'be implied or inferred through the presumed intent to the parties based upon the circumstances of separation of land formerly under one ownership, or be implied by reason of public policy * * *, or inferred often fictitiously through long continued use of the easement'. 2 Thompson on Real Property, s 351 (1961). In Close v. Rensink, 95 Idaho 72, 76, 501 P.2d 1383, 1387 (1972), this court discussed the requisite elements for creation of an easement by implication: 'Wagner v. Fairlamb, supra, (151 Colo. 481, 379 P.2d 165) discusses the four requirements to establish an implied easement, as set out in 1 Thompson, Real Proper (perm. ed. 1939) s 396, at p. 647, quoting therefrom:*

'(1) Unity and subsequent separation of title; (2) obvious benefit to the dominant and burden to the servient tenement existing at the time of the conveyance; (3) use of the premises by the common owner in their altered condition long enough before the conveyance to show that the change was intended to be permanent; and (4) necessity for the easement.'

97 Idaho 770, 773-74, 554 P.2d 948, 951-52 (1976) (emphasis added).

Thus the *Shultz* court recognized three ways the *intent* may be determined in an implied easement case:

1. The intent may be presumed based on the circumstances existing before separation; or
2. Implied by public policy; or
3. “[I]nferred often fictitiously through long continuous use of the easement.” *Id.* at 951, 554 P.2d at 948.

The issues of *intent* and knowledge were discussed in the context of proving one of the material elements of an implied easement in *Davis v. Peacock*:

One of the requirements for establishing an implied easement by prior use is that there has been open and continuous use of the easement prior to the severance of the dominant and servient estates. This requirement ensures that the buyer of the servient property will have notice of the preexisting use. *Consequently, it is equitable to impose an easement on a buyer who already had notice of its existence.*

133 Idaho 637, 641, 991 P.2d 362, 366 (1999), *abrogated by Spokane Structures, Inc. v. Equitable Inv., LLC*, 226 P.3d 1263 (2010) (emphasis added).

Intent was also an important factor in *Bird v. Bidwell*, 147 Idaho 350, 352, 209 P.3d 647, 649 (2009). In discussing *intent* in the context of the second material element of an implied easement, “apparent and continuous use long enough before separation of the dominant estate to show that the use was *intended* to be permanent[.]” *id.* at 352, 209 P.3d at 649, the Court stated:

The district court held that the Plaintiffs failed to prove the second element. After considering the terms of the three deeds, the district court found that the Plaintiffs had failed to prove that the [Grantors] intended to grant an easement to the Plaintiffs. *The Plaintiffs contend that the district court erred in seeking to ascertain the [Grantor’s] subjective intent.* They argue that the only inquiry relevant to this element is whether the use of the road was apparent and continuous for a long period of time prior to the separation of the dominant estate.

The second element includes as a necessary consideration the intent of the grantor at the time the dominant estate was

separated. The intent to grant or reserve the easement is presumed from apparent continuous use for a long period of time prior to that separation. Shultz v. Atkins, 97 Idaho 770, 773, 554 P.2d 948, 951 (1976). The easement is “based on the theory that when someone conveys property, they also intend to convey whatever is required for the beneficial use and enjoyment of that property, and intends to retain all that is required for the use and enjoyment of the land retained.” *Davis v. Peacock*, 133 Idaho 637, 643, 991 P.2d 362, 368 (1999). *Because the intent to grant or reserve the easement is a necessary element, there is no logical reason to base the decision solely upon the grantor's presumed intent from prior use and to exclude other relevant evidence of that intent.* Therefore, the district court did not err in considering that other evidence.

Id., with emphasis added.

The Idaho appellate cases involving implied easements generally discuss circumstances affecting an owner when there is no direct evidence of the grantor’s intent presented. As can be seen by the above cases, *intent* is then inferred or implied by the long permanent use which results in the presumption that it was the *intent* of the parties to create an easement to benefit the remaining real estate held by the grantor.

B. Easement by Necessity

The material elements required to be proven in order to establish an easement by necessity was recently set forth in detail in *Machado v. Ryan*.

In order to establish the existence of an implied easement by necessity, the claimant “must prove ‘(1) unity of title and subsequent separation of the dominant and servient estates; (2) necessity of the easement at the time of severance; and (3) great present necessity for the easement.’ ” *Backman v. Lawrence*, 147 Idaho 390, 394, 210 P.3d 75, 79 (2009) (quoting *Bear Island Water Ass’n, Inc. v. Brown*, 125 Idaho 717, 725, 874 P.2d 528, 536 (1994)). We have held that reasonable necessity is sufficient to satisfy the second element. *Coward v. Hadley*, 150 Idaho 282, 288, 246 P.3d 391, 397 (2010) (citing *Akers v. Mortensen*, 147 Idaho 39, 45–46, 205 P.3d 1175, 1181–82 (2009) (*Akers II*)). Reasonable necessity is “something less than” great present necessity. *Beach Lateral Water Users Ass’n v. Harrison*, 142 Idaho 600, 605, 130 P.3d 1138, 1143 (2006) (citing *Davis v. Peacock*, 133 Idaho 637,

643, 991 P.2d 362, 368 (1999)).

A reasonable necessity for an easement may exist even if the property is not landlocked. In determining whether reasonable necessity exists, the district court must “balance the respective convenience, inconvenience, costs, and other pertinent facts.” *Thomas v. Madsen*, 142 Idaho 635, 638, 132 P.3d 392, 395 (2006) (citing *Eisenbarth v. Delp*, 70 Idaho 266, 270, 215 P.2d 812, 814 (1950)) [footnote omitted]. In *Thomas*, though the subject property was adjacent to a public road, we affirmed a finding of reasonable necessity because, due to the nature of the property, constructing access from that road would have required “considerable expense and time.” *Id.* In contrast, where an existing road provided ready access to the subject property, the easement was not reasonably necessary. *Akers II*, 147 Idaho at 46, 205 P.3d at 1182. Thus, reasonable necessity may exist even where there is a possibility for alternate access.

In contrast, great present necessity exists where the claimed easement is the only access to the claimant's property. *Brown v. Miller*, 140 Idaho 439, 443, 95 P.3d 57, 61 (2004). As the Court of Appeals has held, an easement implied by necessity “must not be granted if there is an alternate access, though it be expensive or inconvenient,” because the expense or inconvenience of an alternate access is insufficient to demonstrate great present necessity. *Bob Daniels & Sons v. Weaver*, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (Ct. App. 1984).

153 Idaho 212, 219-20, 280 P.3d 715, 722-23 (2012).

In addition, in *Capstar III*, 153 Idaho 411, 283 P.3d 728 (2012), the Court added a fourth requirement when it stated that the person/entity claiming an easement by necessity must also establish that any such easement must not only lead to a public road but the claimant must have a legal right to cross other lands to get to the public road.

C. Prescriptive Easements

To establish a prescriptive easement in Idaho, the claimant must show by clear and convincing evidence use that is (1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the servient estate owner, (5) for the statutory period. *Capstar III*, 153 Idaho 411, 420, 283 P.3d 728, 737 (2012).

Each of the material elements are dealt with separately in subsections one through five:

1. Open and Notorious Use

Use of the property must be sufficiently open and notorious so that a reasonable landowner should be aware of its occurrence. *Backman v. Lawrence*, 147 Idaho 390, 396, 210 P.3d 75, 81 (2010). “The purpose of the requirement that prescriptive use be open and notorious is to give the owner of the servient tenement knowledge and opportunity to assert his rights.” *Id.*

2. Continuous and Uninterrupted

In *Beckstead v. Price*, 146 Idaho 57, 190 P.3d 876 (2008), the defendant argued the claimant’s use was not continuous and uninterrupted because the claimant’s use was seasonal. The Court disagreed;

[I]t is generally accepted that the “continuous and uninterrupted” element does not require daily use or even monthly use. 25 Am.Jur.2d *Easements and Licenses* § 61 (2004). The acquisition of a prescriptive easement requires continuous use “according to the nature of the use and the needs of the claimant.” *Id.*

146 Idaho at 63, 180 P.3d at 883.

There is little case law explaining the concept of what exactly constitutes continuity with respect to prescriptive easements. When deciding whether a use was “continuous” with respect to the apparent and continuous use element for implied easements, in *Akers v. D.L. White Construction, Inc.*, the Court honed in on whether the farming use was consistent with the nature and character of the land. 142 Idaho 293, 301, 127 P.3d 196, 204 (2005) (*Akers I*). There, the predecessors, the Millsaps, use was seasonal and they only used the easement about six times a year. Nonetheless, the Court, however, held that this use was sufficiently continuous because it was “consistent with the nature of the property.” *Id.*

3. Adverse and Under a Claim of Right

Use that is permissive is not adverse to the rights of the owner. *Hughes v. Fisher*, 142

Idaho 474, 480, 129 P.3d 1223, 1229 (2006). In order to be considered adverse, the use must constitute an actual invasion of or infringement on the rights of the owner. *Id.*

In *Backman*, the Idaho Supreme Court provided:

A prescriptive right cannot be granted if the use of the servient tenement was by permission of its owner, because the use, by definition, was not adverse to the rights of the owner. Indeed, the rule is well established that no use can be considered adverse or ripen into a prescriptive right unless it constitutes an actual invasion of or infringement on the rights of the owner. Thus, the nature of the use is adverse if it runs contrary to the servient owner's claims to the property. The state of mind of the users of the alleged easement is not controlling; instead, the focus is on the nature of their use. Moreover, mere inaction and passive acquiescence is not a sufficient basis for proving that the use of the claimed right was with the permission of the owner of the servient tenement. Finally, permissive use cannot ripen into a prescriptive easement. If a use has commenced as permissive, a user must make some new and independent act that would put the owner of the servient property on notice that the use was no longer permissive.

147 Idaho at 397-398, 210 P.3d at 82-83 (internal citations and quotations omitted).

In *Akers I* the Court further elaborated on the notion that passive acquiescence is insufficient to establish that the use was permissive because “such acquiescence is equally consistent with recognition of the users’ claim of right.” 142 Idaho at 304, 127 P.3d at 207 (2005).

Where there is open, notorious, continuous, and uninterrupted use of the claimed easement for the prescriptive period, the claimant is entitled to the presumption of adverse use. *Akers I*, 142 Idaho 293, 303-04, 127 P.3d 196, 206-07 (2005). That presumption, however, does not occur if the use is in wild and unenclosed lands. There is a rebuttable presumption that use in wild and unenclosed lands is permissive. *Hodgins v. Sales*, 139 Idaho 225, 232, 76 P.3d 969 976 (2005).

There is a second presumption that access that is open to the general public and is not exclusive to the claimant's use is permissive. *Hall v. Strawn*, 108 Idaho 111, 697 P.3d 451 (Ct. App. 1985), *overruled on other grounds by Cardenas v. Krupjuweit*, 116 Idaho 739, 779 P.2d 414 (1989). The *Hall* court elaborated: "Where...the same degree of use upon which the adverse claim is based has been exercised indiscriminately by the general public, individual acquisition of a prescriptive easement has generally been held impossible." *Id.* at 112-113, 697 P.3d at 452-53 (1985). The reasoning behind this presumption is that it would be unfair to the owner to impute knowledge that one person out of the general public is making an adverse claim. *Backman*, 147 Idaho at 399, 210 P.3d at 84 (2009).

Exclusivity is not an element; rather it is generally seen more as a prerequisite to the establishment of a prescriptive easement. 25 Am. Jur. 2d Easements and Licenses § 53. "The term exclusiveness does not mean that the easement must be used by the claimant only, however; it simply means that the claimant's right to use the easement does not depend on a similar right in others." *Id.*

4. With the Actual or Imputed Knowledge of the Owner

Open and notorious use goes hand in hand with imputed knowledge. If the use is sufficiently open and notorious then the owner's knowledge can be imputed. *Backman*, 147 Idaho 390, 396, 210 P.3d 75, 81 (2010). However, the issue of exclusivity or use by the general public also fits within the paradigm of knowledge. In *Hughes v. Fisher*, the Court stated, "when the claimant is using the land along with members of the general public, it would simply be unfair to impute knowledge to the landowner that the claimant is making an adverse claim." 142 Idaho 474, 481, 129 P.3d 1223, 1230 (2006). The law in Idaho does not allow members of the general public to establish a prescriptive easement unless the individual commits an act to specifically assert his or her rights against the owner so that the owner can be put on notice.

Backman, 147 Idaho at 396, 210 P.3d at 81 (2010).

5. For the Statutory Period

In 2006 the Idaho legislature amended Idaho Code § 5-203 to extend the statutory five year period of time to twenty years. However, the twenty-year time period does not apply to prescriptive easements acquired prior to the amendment. *Capstar III*, 153 Idaho 411, 420 n.2, 283 P.3d 728, 737 n.2 (2012).

Thus, the previous five-year statutory period is applicable in this case.

The following legal principles are also important in any analysis of prescriptive easements:

6. Burden of proof.

In describing the burden of proof, the Idaho Supreme Court found that “clear and convincing evidence is generally understood to be evidence indicating that the thing to be proved is highly probable or reasonably certain.” *A & B Irr. Dist. v. Idaho Dept. Of Water Resources*, 153 Idaho 500, 516, 284 P.3d 225, 241 (2012) (internal citations and quotations omitted).

7. Findings

As to the findings that must be made by the trial court in regard to the five material elements set forth above, in *Backman v. Lawrence*, 147 Idaho 390, 210 P.3d 75 (2009), the Idaho Supreme Court explained:

A determination that a claimant has established a prescriptive easement involves entwined questions of law and fact, since each element is essential to the claim, and the trial court must make findings relevant to each element in order to sustain a judgment on appeal; it is the province of the trial court to determine whether the plaintiffs presented reasonably clear and convincing evidence of each of the five elements. In addition, the creation of a private easement by prescription is not favored under Idaho law.

147 Idaho at 396, 210 P.3d at 81 (internal citations and quotations omitted).

8. Tacking

In order to establish a prescriptive easement, a claimant may rely on use by a predecessor for the prescriptive period, or may “tack” or combine the claimant’s and predecessors’ use. *Akers v. D.L. White Construction*, 142 Idaho 293, 127 P.3d 196 (2005) (*Akers I*).

9. Presumptions

With respect to the use of presumptions; the Supreme Court has said that in order “[t]o disentangle Idaho prescriptive easement law, we emphasize the need for courts to streamline their analysis by focusing simply on whether the five prescriptive easement elements have been satisfied based on the facts before them.” *Hughes v. Fisher*, 142 Idaho 474, 481, 129 P.3d at 1230 (2005).

V. ANALYSIS

A. Implied Easement

1. The Logical Conflict

An implied easement arises when two logical and practical concepts collide in property law. The first logical concept is that the written instrument of conveyance must set forth an easement/subservient interest if the buyer/grantee will not receive an unencumbered fee simple title. *Wilton*, 40 Idaho 81, 231 P. 704 (1924). Flying in the face of this logic is the equitable underpinning of an implied easement, that is, the fact that people who draft documents make mistakes, forget, or do not think everything through.¹

¹ The Restatement (Third) of Property § 2.12, comment a., Rationale, states:

Ownership of land is often split into smaller parcels after roads, utility lines, wells, and other facilities have been installed that benefit all or several parts of the original parcel. *If the transaction splitting the ownership is properly handled, the conveyances will spell out the rights of each of the new parcels to use these facilities. However, transactions are not always properly handled, and*

But what if it makes logical sense for an easement to be in place? Two examples illustrate this concept. First, if a seller and a buyer of real property are both aware that the seller will need to have access to his remaining property over an existing road, and if both parties intended to provide for such access yet the deed fails to provide for the required easement, the seller should not be denied access when the drafter of the documents fails to provide for such access. In the

all too often, a conveyance severing the ownership is silent on the question whether the new parcel is entitled to continued use of the other parcel for access, utilities, and the like.

The rule stated in this section is based on the assumption that people intend to buy and sell land with the existing utility arrangements, unless they make some indication to the contrary. ***Although grantors might be expected to know that they should expressly reserve any use rights they intend to retain after severance, experience has shown that too often they do not.*** Ordinarily, servitudes are implied in favor of the grantor as readily as in favor of the grantee under the rules stated in this section. However, in cases where the grantor should have known of the need to reserve a servitude to continue the prior use, and it would be unfair to burden the grantee with the consequences of the grantor's neglect, the court may refuse to imply a servitude in favor of the grantor, even though it would have implied the servitude in favor of the grantee.

The rule stated in this section is not based solely on the presumed actual intent of the parties. It furthers the policy of protecting reasonable expectations, as well as actual intent, of parties to land transactions. It also promotes efficient use of resources by avoiding the unnecessary costs that would be involved in reestablishing entitlements to make the prior uses, or duplicating the facilities. In the case of underground utilities, it applies even though neither party knew of the prior use.

Comment "h" provides:

No contrary intent expressed or implied. Implication of a servitude under the rule stated in this section is based on what the parties probably intended or had reasonable grounds to expect. The implication does not arise if the facts or circumstances of the conveyance indicate that the parties did not intend to create a servitude to continue the prior use, or that the parties did intend to create rights to terminate the existing utility arrangements. Inclusion of a warranty against encumbrances may give some indication that no servitude was reserved in favor of the grantor, but is not conclusive. Economic consequences to both parties may be relevant indicators of their expectations. If existence of a servitude would severely limit the uses of the servient estate, and replacement of the utilities would not be very expensive, a servitude was probably neither intended or expected. Conversely, if replacement of the facilities would be very expensive, and the servitude's existence would have a negligible impact on the burdened estate, a servitude probably was intended or expected.

Restatement (Third) of Property (Servitudes) § 2.12 (2000) (emphasis added).

second scenario, assuming again that there is a buyer and seller of real property, but there is no showing of intent and no mention is made in the deed for access to the sellers' remaining property, it is inequitable to deny the seller access when it was obvious from a review of the circumstances surrounding the sale and the use of the road that access should have been included. In this second example, based on the facts surrounding the transaction, the law *presumes that it was the intent of the parties* to create an easement in favor of the grantor; or implies the easement by reason of public policy; or infers the intent fictitiously through long continued use. *See Shultz v. Atkins*, 97 Idaho 770, 773-74, 554 P.2d 948, 951-52 (1976).

2. Applying the Facts to the Law in *Capstar v. Lawrence*

In this case, the parties agree that there was unity of title and that the Funks owned the portions agreed to be conveyed to Human Synergistics in 1975.

In July of 1975, there was only one practical way to access the real property owned by the Funks in Section 21 and 22 and that was by using Signal Point Road. From Signal Point Road there was only one private road in existence for ingress and egress to the Funks' Section 21 and 22 properties, the private road which is the subject of this lawsuit.

The seven real estate sales agreements signed by the Funks and Human Synergistics show that both the buyer and sellers were aware of the access and the need for an easement for the benefit of the Funks. This fact is demonstrated by paragraph 5 of each sales contract which provides that the transfer of land to Human Synergistics is "subject to...an ingress egress easement." The grant of an easement to Human Synergistics is reflected in the phrase in paragraph 5 which states, "including an ingress egress easement." The facts presented in this case establish that the buyer, Human Synergistics, had knowledge of the easement road and the need for the use of the easement by both the buyer and sellers. (See Plaintiff's Exhibits 5 -11, which are all dated July 10, 1975, and recorded as consecutive instrument numbers 672112 – 672118).

While the language “subject to... an ingress egress easement over this and adjoining property in Said Sections 21 and 22 owned by the grantor” was not enough to *expressly* convey an easement, it demonstrated the *intent* of the respective parties to allow the Funks to use the existing easement off of Signal Point Road to access their remaining real property in Section 22.

This court recognizes that the *intent* of the parties to the transaction must either be established or implied. As explained in *Davis v. Peacock*, the requirement of proving “open and continuous use of the easement prior to the severance of the dominant and servient estates” is also to show that the buyer of the servient property had notice of the pre-existing use. 133 Idaho 637, 641, 991 P.2d 362, 366 (1999).

The Funks and Human Synergistics knew of the only existing easement and intended by their contract to make it permanent. There is no need to resort to inferences, presumptions, or legal fiction to imply an easement when the parties’ actual *intent* is proven. As stated in *Bird v. Bidwell*, “[b]ecause the intent to grant or reserve the easement is a necessary element, there is no logical reason to base the decision solely upon the grantee’s presumed intent from prior use and to exclude other evidence of this intent.” 147 Idaho 350, 352, 209 P.3d 647, 649 (2009).

Obviously, Human Synergistics had knowledge of the pre-existing use. As stated in *Davis v. Peacock*, “[c]onsequently it is equitable to impose an easement on a buyer who already had notice of its existence.” 133 Idaho 637, 641, 991 P.2d 362, 366 (1999).

As to the third requirement to prove an implied easement, that “the easement must be reasonably necessary to the proper enjoyment of the dominant estate” the facts are uncontroverted that the road easement in question was the only access to the real property in the southeast corner of Section 22 at the time of severance in 1975. This court concludes the easement was reasonably necessary.

3. An Implied Easement is Granted

Capstar has proven the facts required to establish that it is entitled to an implied easement across the existing road on the Lawrences' real property in Section 21.² This is an appurtenant easement and runs with the land. *See Akers I*, 142 Idaho 293, 302, 127 P.3d 196, 205 (2005).

4. Scope of the Easement

The Lawrences argued that if the court grants an easement it should be limited in scope to the use which was occurring in 1975. In *Abbott v. Nampa Schools* the Court stated, "the general rule concerning easements is that the right of an easement holder may not be enlarged and may not encompass more than is necessary to fulfill the easement." 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991). The *Abbott* Court, however, further expounds on scope by providing "an easement granted or reserved in general terms without any limitations as to its use, is one of unlimited reasonable use." *Id.* Therefore, as long as the use of the easement is reasonably necessary to provide access to the properties and tenants in Section 22, there are no strictures on such use and this court declines the invitation to impose restrictions at this stage of the proceedings.

A practical consideration for the parties is the width of the easement. Plaintiff's Exhibit 15, which is a grant of easement from Idaho Forest Industries, Inc., to the Lawrences' predecessors in interest, Don E. Johnston and Fern A. Johnston (husband and wife) and John McHugh and Mary Anne McHugh (husband and wife) sets the easement width on the roadway at 40 feet in width. Further, on July 10, 1996, National Associated Properties ("NAP") signed an easement for ingress, egress, and utility purposes, for a road that was 40 feet in width (Plaintiff's Exhibit 22). NAP was a predecessor in interest of the Lawrences and the "easement" granted refers to the road in this case.

² The Lawrences want the court to ignore the actual intent of the parties as manifested in the seven sale agreements and consider only the number of times the Funks used their property to determine the actual intent and knowledge of the parties. This same argument was used in *Bird*, 147 Idaho 350, 209 P.3d 647 (2009), and rejected. It would truly be a bitter irony to have the Funks and their successors precluded from having an implied easement when the buyer's and seller's knowledge reflected not only the existence of the actual easement road but the buyer's intent for its real property to be subject to the easement.

Considering the snowfall that is faced by users, the need to clear a way through the snow so the road can be usable, the needs for access of equipment or cranes to service the site, and the previous recognition of the 40 foot wide roadway, the court establishes the width of the easement road through the Lawrences' real property as being 40 feet wide.

B. Easement by Necessity

Easements by necessity arise from implied grant or implied reservation. In *Cordwell v. Smith*, the Court of Appeals stated:

We turn next to appellants' assertion that they have an implied easement by "way of necessity." Such necessity can arise when the owner of land conveys part thereof to another, and the part conveyed is without ingress or egress except over the lands retained. *Wagner v. Fairlamb*, supra; *Martino v. Fleenor*, 148 Colo. 136, 365 P.2d 247 (Colo.1961). The Idaho Supreme Court, quoting from *Martino*, and from 17A Am.Jur. 668-69, *Easements*, § 58, said in *Burley Brick & Sand Company v. Cofer*, 102 Idaho 333, 335, 629 P.2d 1166, 1168 (1981):

Although a way of necessity is sometimes confused with an easement arising, on severance of title, from a pre-existing use, there is a definite distinction between them, mainly because a way of necessity does not rest on a pre-existing use but on the need for a way across the granted or reserved premises. A way of necessity is an easement arising from an implied grant or implied reservation; it is a common-law origin and is supported by the rule of sound public policy that lands should not be rendered unfit for occupancy or successful cultivation. Such a way is the result of the application of the presumption that whenever a party conveys property, he conveys whatever is necessary for the beneficial use of that property and retains whatever is necessary for the beneficial use of land he still possesses. Thus, the legal basis of a way of necessity is the presumption of a grant arising from the circumstances of the case. This presumption of a grant, however, is one of fact, and whether a grant should be implied depends upon the terms of the deed and the facts in each particular case...

[I]t is [of] a common-law origin and is supported by the rule of sound public policy that lands should not be rendered unfit for occupancy or successful cultivation. Such a way is the result of the application of the presumption that whenever a party conveys property, he conveys whatever is necessary for the beneficial use of that property and retains whatever is necessary for the beneficial use of land he still possesses. Thus, the legal basis of a way of

necessity is the presumption of a grant arising from the circumstances of the case. This presumption of a grant, however, is one of fact, and whether a grant should be implied depends upon the terms of the deed and the facts in each particular case.

105 Idaho 71, 79, 665 P.2d 1081, 1089 (Ct. App. 1983).

1. The Material Elements for an Easement by Necessity were Proven

The material elements for an easement by necessity are: “(1) unity of title and subsequent separation of the dominant and servient estates; (2) necessity of the easement at the time of severance; and (3) great present necessity for the easement.” *Machado*, 153 Idaho at 219, 280 P.3d at 722 (2012).

The parties agree that there was unity of title when the Funks sold their property to Human Synergistics in July of 1975.

As to the “reasonable” necessity at the time of severance, the facts as testified to by Darius Ruen and other witnesses firmly establish that there was only one way to access the Funks’ remaining property in section 22 after it became landlocked and that was by way of Blossom Mountain Road, the road which is the subject of this litigation. The testimony is unequivocal that the Funks real property in section 22 was landlocked. Therefore, there was reasonable necessity at the time of severance in 1975.

The last material element, “great present necessity for the easement” was also established. Presently, there is no other road or easement that provides access to the Capstar parcel other than the easement road that passes through the Lawrences’ real property in the southeast quarter of Section 21.

2. Access to a Public Road

In *Capstar III*, the Court provided:

Nor is it entirely clear how the district court found the easement by necessity over the Lawrences' land when that

easement would not, in fact, lead to a public road. As the Lawrences point out, Capstar did not have the legal right to travel over the road in Section 28 and where "land over which the way of necessity is claimed has no access to a public road," no necessity can arise. *Rathbun v. Robson*, 203 Mont. 319, 661 P.2d 850, 853 (1983). Therefore, the district court erred in determining this issue on summary judgment because the conflicting evidence presented a genuine issue of material fact regarding whether the evidence proved an easement by necessity.

153 Idaho at 419, 283 P.3d at 736 (2012).

Thus, in *Capstar III*, the Court seemingly added a fourth material element, that the party claiming an easement by necessity prove that the "way of necessity" results in "access to a public road" *Id.*

From the documents submitted, the only written document that Capstar can claim provides "a legal right" to use the easement road across the Stimson Lumber (formerly Ulrich's and then Idaho Forest Industry's) real property in Section 28 comes from an October 10, 2003, letter sent from the "Fee Land Manager" of Stimson to Douglas Lawrence (Plaintiff's Exhibit 84).

In the letter, the land manager, Mr. Opp, stated: "[w]e have no interest in obstructing the access rights of any party with legitimately documented access rights on this road." As such, there was an inadequate showing by Capstar that it had "legitimately documented access rights" to the portion of the road that crossed Section 28.

This court finds that there is no oral or written agreement for Capstar (or its predecessors in interest) to have a "legal right" to travel over the existing access road in Section 28. As Capstar did not prove it had a legal right, and because the letter does not grant any legal right to Capstar, it has no easement at this time on the road in section 28 as it traverses the Stimson property. According to the legal pronouncement made by the Montana Supreme Court in *Rathbun v. Robson*, 203 Mont. 319, 661 P.2d 850 (1983), and adopted by Idaho's Supreme

Court in *Capstar III*, that the party claiming an easement must establish it has a legal right, this court concludes that Capstar has shown no “legal right” of access to a public road. Therefore, Capstar’s claim for an easement by necessity fails.

C. Prescriptive Easement

In this portion of the decision, the five material elements necessary to prove an easement by prescription will be addressed in the context of the admitted evidence. In addition, the issues raised by the Lawrences will be evaluated.

1. Open and Notorious Use

This case is about access to cell phone and radio towers located on a mountain that is visible from Post Falls, Coeur d’Alene, and Interstate 90. A landowner on that same mountain who is within a quarter mile of the towers should be aware of how companies are accessing the towers. Also, as the access road to the towers does not stop at the servient owner’s boundary line, the way in and out is also open and notorious. Without question, the existence and visibility of the towers could hardly be more open and notorious.

John Rook’s entities, Capstar’s predecessors in interest, had ownership of the land from 1989 to 1998. Mr. Rook testified that either he or his employees traveled to the tower site frequently. He also testified that he and his employees were fearful of damaging a tower that was being delivered on the rough portions of Blossom Mountain Road. Consequently, it took three days to bring the tower up to the site. Mr. Rook’s companies also built a small cement shed, which went 12 to 15 feet into the ground so that it could withstand the volatile weather. The tower itself was about 90 feet tall. There were several satellite dishes on site, and Mr. Rook’s company leased space at the tower out to other entities, e.g, Trinity Broadcasting.

Mr. Rook also testified that the only road he or any of the company’s personnel used was the private road which is the subject of this suit. The nature of the business, telecommunications

and radio broadcasting, as well as the fact that the towers were in plain view, shows that the use of Blossom Mountain Road was sufficiently open and notorious so as to put a reasonable land owner on notice that his, her, or its road was being used.

2. Continuous and Uninterrupted

Mr. Rook testified that during the construction of the tower he and/or his employees were at the site on a daily basis. After construction, he or his employees or contractors went up to Blossom Mountain to perform routine or emergency maintenance at the tower site.

The Rook companies' use was continuous and uninterrupted. Their use was consistent with the character of the land. That use was building and maintaining a radio tower as well as other communication facilities. Therefore, the use of the road between 1989 through 1998 satisfies the continuous and uninterrupted element.

3. Adverse and Under Claim of Right

Mr. Rook testified that he did not see any no-trespassing signs while using the road in section 21, and no one ever told him that he was not allowed to use the road. This acquiescence on the part of Human Synergistics did not lead to permission (*See Akers I*, 142 Idaho at 303-04, 127 P.3d 206-07 (2005)). As Mr. Rook's use was open, notorious, continuous and uninterrupted and because Human Synergistic did nothing to either indicate permission or lack thereof, adversity results.

The Lawrences argue that there should be a presumption of permissive use on the part of John Rook because the area is wild and unenclosed. This court finds that the Blossom Mountain area is not wild and unenclosed. The land is only six miles from Post falls by road and two miles as the crow flies. Further, it can be inferred that, as there was evidence of the remnants of the fence lines, there was at one time a fence line along the southern and western boundaries of what would eventually be the Lawrences' property. In addition, it is difficult to characterize that area

as wild and unenclosed when access is limited by at least one locked gate. After reviewing all of the evidence, the court finds as a factual matter and concludes as a matter of law that the Blossom Mountain area in question is not wild and unenclosed and therefore there is no presumption of permissive use. Without the presumption of permissive use, Mr. Rook's use of the Blossom Mountain area is presumed to be adverse because his use was open, notorious, continuous, and uninterrupted for the prescriptive period.

The Lawrences also argue that Capstar's use was not exclusive, citing the exclusivity issue and the public use exception discussed in *Hall v. Strawn*, 108 Idaho 111, 697 P.2d 451 (1985). Exclusivity is relevant to the public use exception because if a claimant is using the property in accordance with the general public's rights there is nothing to distinguish the claimant from the public. *Backman* 147 Idaho at 399, 210 P.3d at 84 (2009). The public use exception, however, does not apply here because the road is not accessible to the general public. In *Hall*, the road in question was accessible to anyone who had occasion to use the road. *Hall*, 108 Idaho at 113, 697 P.2d at 453 (1985). In this case, there is a locked gate just off of the public road. The existence of the locked gate on the easement road shortly after turning off the public road demonstrates that the road was not available to anyone who had occasion to use the road, as was the case in *Hall*. Capstar and its predecessor companies who owned/leased the real property asserted their rights independently. Therefore, the exception does not apply and Mr. Rook's use of the road was adverse.³

4. With Actual or Imputed Knowledge

Human Synergistics had actual and imputed knowledge. This conclusion is facile once the open and notorious element has been satisfied. Furthermore, Human Synergistics had actual

³ Even if the roadway could possibly be considered to be open to the public, Mr. Rook testified that it took three days to transport the tower across the easement road. A three day period of slow travel would indicate to the owner of the servient estate the adverse nature of such claim. See *Hall v. Strawn*, 108 Idaho 111, 113, 697 P.2d 451, 453 (1985).

knowledge of the use of the road. This is evidenced by the sales agreements between Human Synergistics and Funk (Plaintiff's Exhibits 5-11).

5. For the Statutory Period

Mr. Rook's companies owned what is now the Capstar parcel from 1989-1998. At that time the statutory period necessary to establish a claim for a prescriptive easement was five years. Mr. Rook satisfied all of the elements necessary to acquire an easement by prescription.

The court finds that all of the material elements were established by clear and convincing evidence. Mr. Rook's companies' acquired a prescriptive easement across the southwest corner of Section 21 to access what eventually became the Capstar real property in Section 22. Capstar, Mr. Rook's successor in interest, therefore has the same prescriptive easement.

VI. CONCLUSION

Capstar proved its right to an easement which is 40 feet in width for ingress, egress, and utilities over and adjacent to the existing road across the Lawrences' property in section 21, Township 50 North, Range 5 West, Kootenai County Idaho. The centerline of the existing road shall be the centerline of the 40 foot wide easement. The easement shall be for unlimited reasonable use.

In addition, Capstar is granted a permanent injunction. The Lawrences, their agents, servants, employees, and those persons in active concert or participation with the Lawrences are precluded from interfering with, impeding, or preventing Capstar, its agents, servants, contractors, or employees from using, developing, maintaining, improving, and/or servicing the easement.

The Idaho Supreme Court's decision in *Capstar III* adds an additional requirement for Capstar to prove it is entitled to an easement by necessity: that the easement results in access to a public road. As to its claim for an easement by necessity, because Capstar did not prove it had a

legal right to use the land in Section 28 to obtain access to a public road, such an easement is not ordered and this claim is dismissed.

Regarding Capstar's prescriptive easement allegations, the court determines that the five material elements were proven with clear and convincing evidence and Capstar is awarded a prescriptive easement for ingress, egress, and utilities on the existing easement.

The court determines that Capstar is the prevailing party and awards costs to Capstar concerning the issues that were tried.

To effectuate this decision, Capstar is ordered to conduct a survey of the easement as awarded on the real property in section 21 owned by the Lawrences and serve a copy of the completed survey to counsel for the Lawrences and provide a copy to the court. The Lawrences shall have 30 days upon receipt of the survey within which to object. If there is an objection the court will set the matter for hearing at a time convenient to both court and counsel. If there is no objection Capstar is ordered to submit a final judgment to the court for signature forthwith if no other court proceedings are required.

Dated this 10th day of September, 2013.


STEVE VERBY, District Judge

CERTIFICATE OF SERVICE

I certify that on this 10th day of September, 2013, I caused a true and correct copy of this MEMORANDUM DECISION AND ORDER to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Susan Weeks and Cynthia Meyer
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Attorneys for Plaintiff

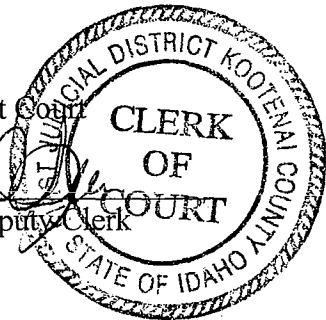
☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 664-1684
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Douglas Marfice and Theron De Smet
Ramsden & Lyons, LLP
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Attorneys for Defendants

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☐ Hand Delivered
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☐ E-mail

Clifford T. Hayes
Clerk of the District Court

By: [Signature]
Deputy Clerk



STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED:

2014 MAY 22 AM 11:57

CLERK DISTRICT COURT

[Signature]
DEPUTY

SUSAN P. WEEKS, ISB #4255
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
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Telephone: (208) 667-0683
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,
a Delaware corporation,

Plaintiff,

vs.

DOUGLAS LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Defendants.

Case No. CV 02-7671

**FINAL JUDGMENT AND
DECREE OF QUIET TITLE
AND PERMANENT
INJUNCTION**

The Court having entered its Memorandum Decision and Order herein,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
FOLLOWS:

1. The Court hereby decrees that Plaintiff has an ingress and egress easement by implication across Defendant's real property; located in Section 21, Township 51 North, Range 5 West for ingress, egress, and utilities for unlimited reasonable use. Although the Court found the easement to be forty (40) feet in width, following issuance of the Memorandum Decision and Order, the parties agreed to a reduced width of thirty (30) . The centerline of the easement shall

be the centerline of the existing road. The location of the easement is more particularly described in Exhibit "A" attached hereto and incorporated herein.

2. Alternatively, the Court hereby decrees that Plaintiff has an ingress and egress easement by prescription across Defendant's real property; located in Section 21, Township 51 North, Range 5 West for ingress and egress. Although the Court found the easement to be forty (40) feet in width, following issuance of the Memorandum Decision and Order, the parties agreed to a reduced width of thirty (30) . The centerline of the easement shall be the centerline of the existing road. The location of the easement is more particularly described in Exhibit "A" attached hereto and incorporated herein.

3. Douglas Lawrence and Brenda J. Lawrence, their heirs, successors or assigns, their respective agents, servants, employees and persons in active concert or participation with them, are enjoined from interfering with, impeding, or preventing Capstar, its heirs, successors or assigns, agents, servants, contractors, employees or tenants from use or maintenance of the road traversing the Lawrence property more commonly known as Blossom Mountain Road, described in Exhibit "A" hereto.

4. Plaintiff is the prevailing party and is awarded its costs.

DATED this 22nd day of May, 2014.


STEVE VERBY
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of May, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Douglas Marfice
Theron DeSmet
700 Northwest Blvd.
P.O. Box 1336
Coeur d'Alene, ID 83816

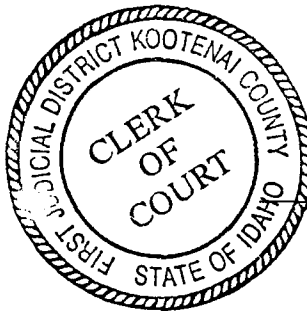
- ☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile to: (208) 664-5884

#547

Susan P. Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814

- ☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile to: (208) 664-1684

#548



Rebel DeFuria

BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at the Southeast corner of Section 21, monumented by a 2 1/2" Zinc cap, thence westerly along the south line of said section, South 89°27'43" West, 602.57 feet to the centerline of Apple Blossom Mountain Road and the POINT OF BEGINNING.

thence continuing along said section line South 89°27'43" West, 15.03 feet to the North right-of-way of Apple Blossom road,

thence leaving said section line and continuing along the said North right-of-way the following courses and distances;

thence 255.30 feet along a curve to the right, having a radius of 750.23 feet, and a long chord that bears North 12°42'32" East, 254.07 feet;
thence North 18°35'46" East, 164.80 feet;
thence North 26°21'12" East, 43.85 feet;
thence 157.70 feet along a curve to the right, having a radius of 90.06 feet, and a long chord that bears North 79°21'30" East, 138.32 feet;
thence South 50°55'04" East, 163.40 feet;
thence South 58°42'22" East, 163.84 feet;
thence South 61°12'45" East, 54.65 feet;
thence South 64°56'20" East, 41.65 feet to the East line of Section 21;

thence leaving said right-of-way along said Section line South 00°19'03" East, 33.20 feet to the South right-of-way of Apple Blossom Road;

thence continuing along said right-of-way the following courses and distance:

thence North 64°56'20" West, 56.86 feet;
thence North 61°12'45" West, 56.28 feet;
thence North 58°42'22" West, 166.54 feet;
thence North 50°55'03" West, 165.66 feet;
thence 104.52 feet along a curve to the left having a radius of 60.06 feet and a long chord which bears South 79°41'04" West, 91.82 feet;
thence South 26°21'12" West, 40.99 feet;
thence South 18°35'46" West, 163.79 feet;

JUDGMENT
EXHIBIT NO. A
IDENTIFICATION/EVIDENCE
CASE NO. CV-02-7671
Page: 1 of 3



Engineers Surveyors Planners

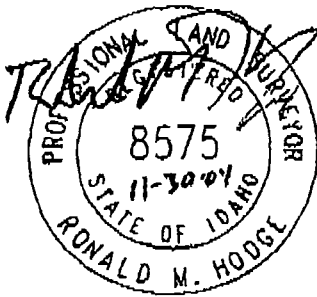
thence 244.25 feet along a curve to the left, having a radius of 720.23 feet, and a long chord that bears South 12°49'18" West, 243.09 feet to the South line of Section 21;

thence leaving said right-of-way Westerly along said Section line South 89°27'43" West, 15.03 feet to the POINT OF BEGINNING.

Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:
J-U-B ENGINEERS, Inc.
Ronald M. Hodge, P.L.S.



RMH/BLG
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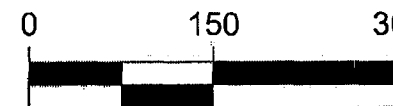
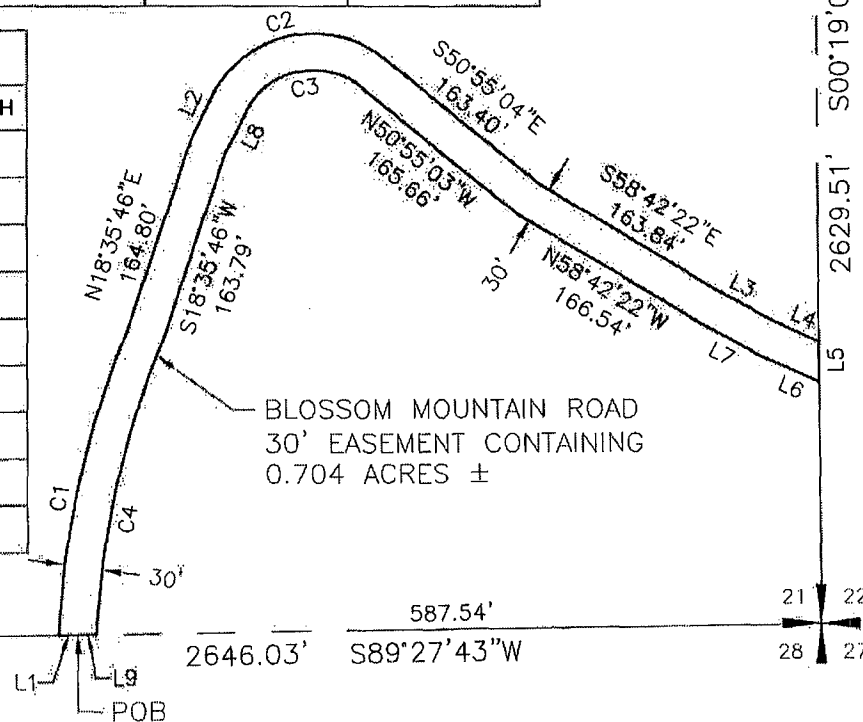
JUDGMENT
EXHIBIT NO. A
IDENTIFICATION/EVIDENCE
CASE NO. CV-02-7671
Page: 2 of 3

CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	255.30'	750.23'	19°29'51"	S12°42'32"W	254.07'
C2	157.71'	90.06'	100°20'14"	S79°21'30"W	138.32'
C3	104.52'	60.06'	99°42'28"	S79°41'04"W	91.82'
C4	244.26'	720.23'	19°25'53"	S12°49'18"W	243.09'

LINE TABLE

LINE #	DIRECTION	LENGTH
L1	S89°27'43"W	15.03'
L2	N26°21'12"E	43.85'
L3	S61°12'45"E	54.65'
L4	S64°56'20"E	41.65'
L5	S0°19'03"E	33.20'
L6	N64°56'20"W	56.86'
L7	N61°12'45"W	56.28'
L8	S26°21'12"W	40.99'
L9	S89°27'43"W	15.03'



SCALE IN FEET

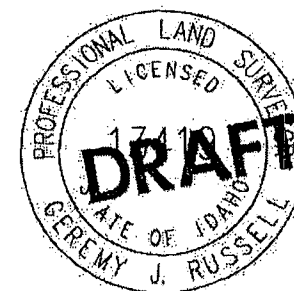


EXHIBIT
BLOSSOM MOUNTAIN ROAD

30' ROAD EASEMENT
SE 1/4 SECTION 21 T50N, R5W, B.M. KOOTENAI CO. IDAHO



Judgment
EXHIBIT NO. A
IDENTIFICATION/EVIDENCE
CASE NO. CV-02-7671
Page 3 of 3

STATE OF IDAHO)
County of Kootenai) ss

FILED 11-10-14

AT 8:50 O'clock AM
CLERK OF THE DISTRICT COURT

[Signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,)
a Delaware corporation,)

Plaintiff,)

vs.)

DOUGLAS LAWRENCE and BRENDA)
LAWRENCE, husband and wife,)

Defendants.)
_____)

CASE NO. CV-02-7671

MEMORANDUM DECISION
AND ORDER RE:

1. MOTION FOR
ENLARGEMENT OF TIME;
AND

2. MOTION FOR
RECONSIDERATION

Plaintiff's Motion for Enlargement of Time is granted. Defendants' Motion for
Reconsideration is denied.

Susan Weeks, JAMES, VERNON & WEEKS, P.A., represented Plaintiff.

W. Jeremy Carr, CLARK and FEENEY, represented Defendants.

I. HISTORY

After a six-day bench trial was held, a Memorandum Decision and Order was entered on September 10, 2013. On May 22, 2014, a Final Judgment was entered providing for a Decree of Quiet Title and Permanent Injunction in favor of Capstar Radio Operating Company (“Capstar”). The Plaintiff, Capstar, was awarded an easement through Douglas Lawrence and Brenda Lawrence’s real property. Capstar prevailed on its theory of implied easement by prior use as well as its prescriptive easement theory. Further, although the finding was made that the easement was forty (40) feet in width, the judgment stated that the easement was thirty (30) feet in width based upon the stipulation of the parties. Lastly, the Lawrences were permanently enjoined from interfering, impeding, or preventing Capstar from using or maintaining the easement which is commonly known as Blossom Mountain Road.

On June 4, 2014, the Lawrences filed a Motion for Reconsideration and a supporting brief. On September 3, 2014, Capstar filed a Motion for Enlargement of Time and a responsive brief that opposed the Motion for Reconsideration. On September 4, 2014, the parties motions came on for hearing. After oral argument, the matters were taken under advisement.

II. STANDARD OF REVIEW

I.R.C.P. 11(a)(2)(B) provides that “a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment.”

In *Fragnella v. Petrovich*, 153 Idaho 266, 281 P.3d 103 (2012), the Idaho Supreme Court stated:

The district court has no discretion on whether to entertain a motion for reconsideration pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B). On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. However, a motion for reconsideration need not be supported by any new evidence or authority. When deciding the motion for reconsideration, the

district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered. In other words, if the original order was a matter within the trial court's discretion, then so is the decision to grant or deny the motion for reconsideration. If the original order was governed by a different standard, then that standard applies to the motion for reconsideration.

153 Idaho at 276, 281 P.3d at 113 (citations omitted).

III. DISCUSSION

A. Capstar's Motion for Enlargement of Time

Capstar's Motion for Enlargement of Time was not specifically addressed at the September 4, 2014, hearing. The motion, however, was filed before the hearing date and the Lawrences did not provide any written or oral objection. In reviewing Capstar's supporting brief, Capstar's reasoning shows good cause and excusable neglect as required by I.R.C.P. 6(b) to support an extension of time to file the responsive brief to the Lawrences' Motion for Reconsideration. Specifically, Capstar contends in its supporting brief that it was not served with the Lawrences' materials and only learned that the materials had been filed shortly before the hearing date. The Court finds that Capstar has shown good cause and excusable neglect, and having received no objection, the Court in its discretion grants Capstar's Motion for an Enlargement of Time.

B. The Lawrences' Motion for Reconsideration

The Lawrences request reconsideration based upon three issues: (1) Capstar had no standing to seek quiet title; (2) the Court erred in finding an implied easement by prior use; and (3) the Court erred in finding a prescriptive easement.

1. Capstar had standing to quiet title.

The Lawrences assert that Capstar did not have standing to pursue a quiet title action.

In *Capstar I*, our Supreme Court said, “Capstar owns its property.” *Capstar Radio Operating Company v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007). In the Memorandum Decision and Order, the finding was made that Capstar purchased its property in 2000.

Therefore, Capstar, as the title holder of real property, had standing to seek a quiet title determination in regard to the easement which went through the Lawrences’ real property.

2. The evidence proved an implied easement by prior use.

The Lawrences argue that Harold Funk (“Funk”) testified in his deposition that his parcel had access to what is now the Lawrences’ property via Mellick Road. As such, the Lawrences assert the necessity element has not been satisfied. Further, the Lawrences take the position that because Funk testified that he only visited his property 20-30 times over a six year period, and as the Idaho Supreme Court, in *Capstar III*, concluded that Funk’s frequency of use did not rise to the level required to establish an implied easement by prior use, no easement could be found to exist. See Memorandum in Support of Motion for Reconsideration at pages 2-3. These arguments are addressed separately in this section of the memorandum decision.

a. Mellick Road

As to Mellick Road, that issue was addressed in the Memorandum Decision and Order.

The findings on this issue were:

Testimony and exhibits were admitted concerning the existence of Mellick Road and whether it provided access to the Funks through Section 15. After a review of the evidence presented, the court finds that the developed portion of Mellick Road did not extend to the Funk’s real property in Section 15 in 1975. This factual/legal finding is

based on the testimony of Darius Ruen, who was meticulous, precise, and inherently believable. Mr. Ruen's testimony was buttressed by other witness testimony. The court adopts Mr. Ruen's testimony as being wholly credible and finds that the facts to which he testified are controlling. The court further finds that those facts contradict the testimony of any defense witnesses as well as any facts testified to by Mr. Lawrence concerning access by way of Mellick Road.

Memorandum Decision and Order at pages 9-10. Further, the Memorandum Decision stated,

As to the third requirement to prove an implied easement, that "the easement must be reasonably necessary to the proper enjoyment of the dominant estate" the facts are uncontroverted that the road easement in question was the only access to the real property in the southeast corner of Section 22 at the time of severance in 1975. This court concludes the easement was reasonably necessary.

Memorandum Decision and Order at page 20. Despite the Lawrences' contention to the contrary, the trial testimony established that Mellick Road terminated on property which was not owned by Funk. There was sufficient evidence presented to support the Court's conclusion that the necessity element was satisfied. The Lawrences did not bring forth any additional evidence to support their argument that Funk's deposition testimony was the "best evidence" as to whether or not Mellick Road extended into his property. The Lawrences' argument on the Mellick road issue was rejected in the Memorandum Decision and Order and it is rejected again now.

b. Frequency of Use

As to Funk's frequency of use, in *Capstar III*, the Idaho Supreme Court provided,

[T]he record presents genuine issues of material fact regarding whether the Funks' use of the easement road was apparent and continuous and whether it was reasonably necessary to use the Blossom Mountain access road to reach their property in Section 22.

Capstar Radio Operating Company, 153 Idaho 411, 417, 283 P.3d 728, 734 (2012).

While there were genuine issues of material fact in existence as to the easement road's usage when the matter was before our Supreme Court at the summary judgment stage of the proceedings, this Court resolved those issues at trial in its role as the trier of fact, and determined that the "usage" element was satisfied. A detailed analysis of this conclusion is contained in the Memorandum Decision and Order at pages 11-15 and 17-20.

3. The evidence proved a prescriptive easement.

Lastly, the Lawrences set forth their belief that Capstar did not prove the notice of use element as there was no evidence presented that any of the Lawrences' predecessors had actual knowledge of use of the easement road. The Lawrences also argue that there was no evidence presented that Capstar's use of the easement road was adverse, hostile, or without permission.

As to the Lawrences' argument, there was evidence presented at trial that showed there was actual or imputed knowledge that the easement road was being used. Specifically, this Court found,

Human Synergistics had actual and imputed knowledge. This conclusion is facile once the open and notorious element has been satisfied. Furthermore, Human Synergistics had actual knowledge of the use of the road. This is evidenced by the sales agreements between Human Synergistics and Funk (Plaintiff's Exhibits 5-11).

Memorandum Decision and Order at pages 32-33. Therefore, there is evidence in the record that supports the conclusion of law that the actual or imputed knowledge element was satisfied.

As to adverse, hostile, or permissive use, these arguments were previously considered.

The Memorandum Decision and Order states:

Mr. Rook testified that he did not see any no-trespassing signs while using the road in section 21, and no one ever told him that he was not allowed to use the road. This acquiescence on the part of Human Synergistics did not lead to permission (*See Akers I*, 142 Idaho at 303-04, 127 P.3d 206-07 (2005)). As Mr. Rook's use was open, notorious, continuous and uninterrupted and because Human Synergistic did nothing to either indicate permission or lack thereof, adversity results.

The Lawrences argue that there should be a presumption of permissive use on the part of John Rook because the area is wild and unenclosed. This court finds that the Blossom Mountain area is not wild and unenclosed. The land is only six miles from Post falls by road and two miles as the crow flies. Further, it can be inferred that, as there was evidence of the remnants of the fence lines, there was at one time a fence line along the southern and western boundaries of what would eventually be the Lawrences' property. In addition, it is difficult to characterize that area as wild and unenclosed when access is limited by at least one locked gate. After reviewing all of the evidence, the court finds as a factual matter and concludes as a matter of law that the Blossom Mountain area in question is not wild and unenclosed and therefore there is no presumption of permissive use. Without the presumption of permissive use, Mr. Rook's use of the Blossom Mountain area is presumed to be adverse because his use was open, notorious, continuous, and uninterrupted for the prescriptive period.

The Lawrences also argue that Capstar's use was not exclusive, citing the exclusivity issue and the public use exception discussed in *Hall v. Strawn*, 108 Idaho 111, 697 P.2d 451 (1985). Exclusivity is relevant to the public use exception because if a claimant is using the property in accordance with the general public's rights there is nothing to distinguish the claimant from the public. *Backman* 147 Idaho at 399, 210 P.3d at 84 (2009). The public use exception, however, does not apply here because the road is not accessible to the general public. In *Hall*, the road in question was accessible to anyone who had occasion to use the road. *Hall*, 108 Idaho at 113, 697 P.2d at 453 (1985). In this case, there is a locked gate just off of the public road. The existence of the locked gate on the easement road

shortly after turning off the public road demonstrates that the road was not available to anyone who had occasion to use the road, as was the case in *Hall*. Capstar and its predecessor companies who owned/leased the real property asserted their rights independently. Therefore, the exception does not apply and Mr. Rook's use of the road was adverse.

Memorandum Decision and Order at page 31 (footnote omitted). This Court continues to find that Capstar proved all of the elements to support an award of a prescriptive easement.

VI. CONCLUSION

Based upon the foregoing discussion, Capstar does have standing to pursue a quiet title action. Further, Capstar proved that it is entitled to an implied easement by prior use. Lastly, Capstar proved that it is entitled to a prescriptive easement.

Therefore, IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is denied.

Dated this 7th day of November, 2014.


STEVE VERBY, District Judge

CERTIFICATE OF SERVICE

I certify that on this 10 day of November, 2014, I caused a true and correct copy of this Memorandum Decision and Order Re: Reconsideration to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Susan Weeks and Cynthia Meyer
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Attorneys for Plaintiff

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Via Fax: (208) 664-1684
<input type="checkbox"/>	E-mail

578

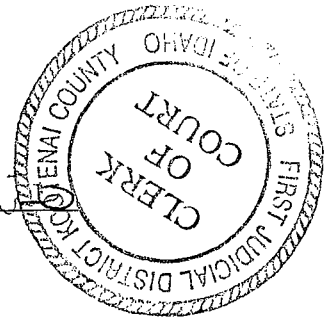
W. Jeremy Carr
Clark and Feeney
PO Drawer 285
Lewiston, ID 83501
Attorneys for Defendants

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Via Fax: (208) 746-9160
<input type="checkbox"/>	E-mail

579 586

Jim Brannon
Clerk of the District Court

By: Cathy [Signature]
Deputy Clerk



STATE OF IDAHO
COUNTY OF KOOTENAI
FILED:
2015 FEB -5 AM 10:55

In the Supreme Court of the State of Idaho

CLERK DISTRICT COURT

CAPSTAR RADIO OPERATING COMPANY
a Delaware corporation,

Plaintiff-Respondent,

v.

DOUGLAS P. LAWRENCE and BRENDA J.
LAWRENCE, husband and wife,

Respondents-Appellants.

DEPUTY)

ORDER AUGMENTING APPEAL
WITH PRIOR APPEAL NOS.
32090, 35120 AND 38300

Supreme Court Docket No. 42326-2014
Kootenai County No. 2002-7671

There having been a CLERK'S RECORD AND REPORTER'S TRANSCRIPTS previously filed with this Court in each of the related appeal Nos. 32090, 35120, and 38300, *Capstar Radio v. Lawrence* (Kootenai County No. CV-2002-7671); therefore,

IT HEREBY IS ORDERED that the above entitled appeal shall be AUGMENTED to include the Clerk's Records and Reporter's Transcripts previously filed in related appeal Nos. 32090, 35120, and 38300, *Capstar Radio v. Lawrence*.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in the Notice of Appeal in Docket No. 42326, together with a copy of this Order, but shall not duplicate any documents filed in prior appeal Nos. 32090, 35120, and 38300.

IT FURTHER IS ORDERED that the Court Reporter shall prepare and lodge a SUPPLEMENTAL REPORTER'S TRANSCRIPT, which shall include the proceedings requested in the NOTICE OF APPEAL in Docket No. 42326, but shall not duplicate any proceedings included in the Reporter's Transcripts filed in prior appeal Nos. 32090, 35120, and 38300. The LIMITED CLERK'S RECORD AND REPORTER'S TRANSCRIPTS shall be filed with this Court after the settlement period expires.

DATED this 4th day of February, 2015.

For the Supreme Court

Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

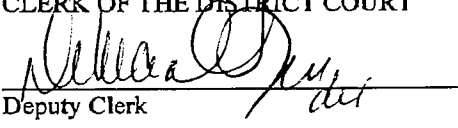
cc: Counsel of Record
District Court Clerk
Court Reporter Valerie Nunemacher
District Judge Steven C. Verby

Entered on JSI
By: kg.

STATE OF IDAHO)
County of Kootenai) ss

FILED 2-17-2015

AT 9:55 O'clock A M
CLERK OF THE DISTRICT COURT


Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,)
a Delaware corporation,)

Plaintiff,)

vs.)

DOUGLAS LAWRENCE and BRENDA)
LAWRENCE, husband and wife,)

Defendants.)

CASE NO. CV-02-7671

AMENDED FINAL JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiff has an ingress, egress, and utility easement arising from prior use and a prescriptive easement across Defendants' real property located in Section 21, Township 51 North, Range 5 West. The scope of the easement is identical under both easement theories. The easement is for reasonable use without limitation. The width of the easement is 30 feet and said easement is more particularly described in Exhibit "A" attached hereto and incorporated herein.

2. Douglas Lawrence and Brenda J. Lawrence, their heirs, successors or assigns, their

respective agents, servants, employees and those persons in active concert or participation with the Lawrences, are enjoined from interfering with, impeding, or preventing Capstar, its agents, servants, contractors, employees, tenants, successors, or assigns from using, developing, maintaining, improving, and/or servicing the easement which crosses the Lawrence property and is more commonly known as Blossom Mountain Road, described in Exhibit "A" hereto.

Dated this 13th day of February, 2015.


STEVE VERBY, District Judge

CERTIFICATE OF SERVICE

I certify that on this 17 day of February, 2015, I caused a true and correct copy of this FINAL JUDGMENT to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Susan Weeks and Cynthia K.C. Meyer
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Attorneys for Plaintiff

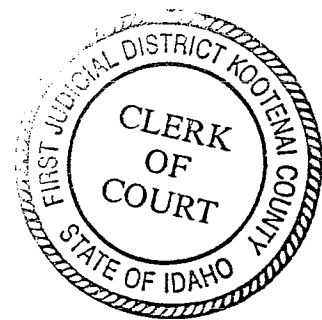
☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 664-1684 594
☐ E-mail

W. Jeremy Carr
Clark and Feeney
PO Drawer 285
Lewiston, ID 83501
Attorneys for Defendants

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 746-9160 595
☐ E-mail

Jim Brannon
Clerk of the District Court

By: Sara Dixon
Deputy Clerk



BLOSSOM MOUNTAIN ROAD
30' ROAD EASEMENT

That portion of the Southeast 1/4 of Section 21, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Commencing at the Southeast corner of Section 21, monumented by a 2 1/2" Zinc cap, thence westerly along the south line of said section, South 89°27'43" West, 602.57 feet to the centerline of Apple Blossom Mountain Road and the POINT OF BEGINNING.

thence continuing along said section line South 89°27'43" West, 15.03 feet to the North right-of-way of Apple Blossom road,

thence leaving said section line and continuing along the said North right-of-way the following courses and distances;

thence 255.30 feet along a curve to the right, having a radius of 750.23 feet, and a long chord that bears North 12°42'32" East, 254.07 feet;

thence North 18°35'46" East, 164.80 feet;

thence North 26°21'12" East, 43.85 feet;

thence 157.70 feet along a curve to the right, having a radius of 90.06 feet, and a long chord that bears North 79°21'30" East, 138.32 feet;

thence South 50°55'04" East, 163.40 feet;

thence South 58°42'22" East, 163.84 feet;

thence South 61°12'45" East, 54.65 feet;

thence South 64°56'20" East, 41.65 feet to the East line of Section 21;

thence leaving said right-of-way along said Section line South 00°19'03" East, 33.20 feet to the South right-of-way of Apple Blossom Road;

thence continuing along said right-of-way the following courses and distance;

thence North 64°56'20" West, 56.86 feet;

thence North 61°12'45" West, 56.28 feet;

thence North 58°42'22" West, 166.54 feet;

thence North 50°55'03" West, 165.66 feet;

thence 104.52 feet along a curve to the left having a radius of 60.06 feet and a long chord which bears South 79°41'04" West, 91.82 feet;

thence South 26°21'12" West, 40.99 feet;

thence South 18°35'46" West, 163.79 feet;

COURT'S
EXHIBIT NO. A
IDENTIFICATION/EVIDENCE
CASE NO. CV 02-7671
DATE Page 1 of 3



Engineers Surveyors Planners

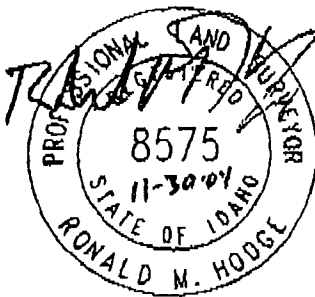
thence 244.25 feet along a curve to the left, having a radius of 720.23 feet, and a long chord that bears South 12°49'18" West, 243.09 feet to the South line of Section 21;

thence leaving said right-of-way Westerly along said Section line South 89°27'43" West, 15.03 feet to the POINT OF BEGINNING.

Containing 0.704 acres, more or less.

END OF DESCRIPTION

Prepared by:
J-U-B ENGINEERS, Inc.
Ronald M. Hodge, P.L.S.



RMH/BLG
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COURT'S
EXHIBIT NO. A
IDENTIFICATION/EVIDENCE
CASE NO. _____
DATE: 2 of 3

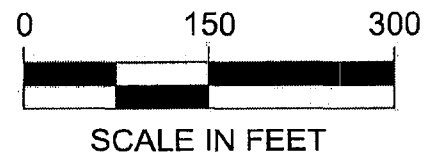
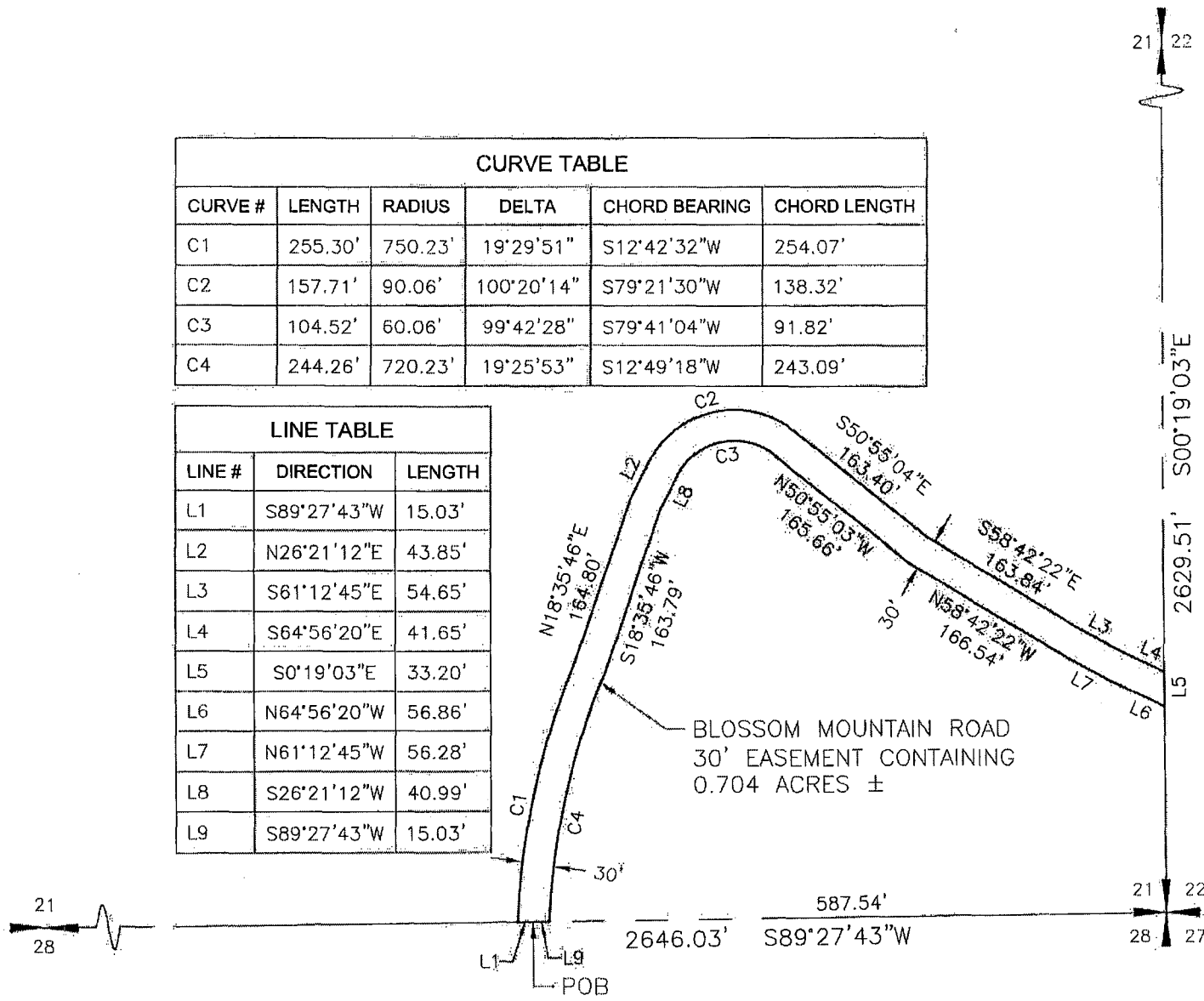


CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	255.30'	750.23'	19°29'51"	S12°42'32"W	254.07'
C2	157.71'	90.06'	100°20'14"	S79°21'30"W	138.32'
C3	104.52'	60.06'	99°42'28"	S79°41'04"W	91.82'
C4	244.26'	720.23'	19°25'53"	S12°49'18"W	243.09'

LINE TABLE

LINE #	DIRECTION	LENGTH
L1	S89°27'43"W	15.03'
L2	N26°21'12"E	43.85'
L3	S61°12'45"E	54.65'
L4	S64°56'20"E	41.65'
L5	S0°19'03"E	33.20'
L6	N64°56'20"W	56.86'
L7	N61°12'45"W	56.28'
L8	S26°21'12"W	40.99'
L9	S89°27'43"W	15.03'



COURT'S EXHIBIT NO. A

IDENTIFICATION/EVIDENCE

CASE NO.

DATE: 3 of 3

EXHIBIT BLOSSOM MOUNTAIN ROAD

30' ROAD EASEMENT

SE 1/4 SECTION 21 T50N, R5W, B.M. KOOTENAI CO. IDAHO



Engineers • Surveyors • Planners

CAD FILE: SW-Blossom-MT-RD

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 27810

2014 JUL -1 PM 2: 31

CLERK DISTRICT COURT

DEPUTY

1 W. JEREMY CARR
2 CLARK and FEENEY
3 Idaho State Bar # 6827
4 1229 Main Street
5 P.O. Drawer 285
6 Lewiston, ID 83501
7 Telephone: (208) 743-9516
8 Facsimile: (208) 746-9160
9 Attorneys for Defendants/Appellants,

10
11 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

13 CAPSTAR RADIO OPERATING COMPANY,)
14 a Delaware Corporation,)

15 Plaintiff,)

16 vs.)

17 DOUGLAS LAWRENCE and BRENDA J.)
18 LAWRENCE, husband and wife,)

19 Defendants.)

Case No. CV02-07671

NOTICE OF APPEAL

FILING FEE \$129.00

20 TO: THE ABOVE NAMED RESPONDENTS, CAPSTAR RADIO OPERATING COMPANY,
21 a Delaware Corporation, and THEIR ATTORNEY, SUSAN P. WEEKS, JAMES, VERNON
22 and WEEKS, P.A. 1626 Lincoln Way, Coeur d'Alene, Idaho, 83814:

23 AND TO: THE CLERK OF THE ABOVE-ENTITLED COURT.

24 NOTICE IS HEREBY GIVEN THAT:

25 1. The above-named Appellants, DOUGLAS LAWRENCE and BRENDA J. LAWRENCE,
26 husband and wife, appeal against the above-named Respondents, CAPSTAR RADIO OPERATING
COMPANY, a Delaware Corporation, to the Idaho Supreme Court from the *Final Judgment and Decree of*
Quiet Title and Permanent Injunction entered in the above entitled action on May 22, 2014, by the Honorable
Steve Verby and the *Memorandum Decision and Order* entered in the above entitled action on September

NOTICE OF APPEAL

1

10, 2013, by the Honorable Steve Verby.

2. The party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the Appellants intend to assert in the appeal include the following:

- (a) Did the District Court error in determining that the plaintiff has ingress and egress easement by implication across the defendants' real property?
- (b) Did the District Court error in determining the easement for egress and ingress and utilities is for unlimited reasonable use?
- (c) Did the District Court error in determining the easement to be forty (40) feet in width?
- (d) Did the District Court error in determining the plaintiff has an ingress and egress easement by prescription across defendants' real property?
- (e) Did the District Court error in granting the scope of the plaintiff's easement across the defendants' real property?
- (f) Did the District Court error in that the defendants and their heirs, successors and assignees shall be enjoined from interfering with plaintiff's use or maintenance of the road traversing the defendant's real property?
- (g) Whether the plaintiffs had standing as tenants to bring a quiet title action against the defendants.

4. There has been no order entered sealing all or any portion of the record.

5. (a) A reporter's transcript has been requested and the estimated fee has been paid.
- (b) The Appellants request the preparation of the reporter's standard transcript as defined in Rule 25(c) I.A.R. of the trial held on June 11, 2013, - June 20, 2013, in both hard copy and electronic format.

6. The Appellants do not request additional documents be added to the Clerk's Record.

Appellant only requests the documents automatically included under Rule 28 I.A.R.

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7. The Appellants request the following documents, charges, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: All exhibits admitted into evidence.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and Address:

Val Nunemacher
P O Box 9000
Coeur d'Alene ID 83816

(b) That the clerk of the district court has been paid the estimated fees for preparation of the designated reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 24th day of June, 2014.

CLARK and FEENEY


By: 

W. Jeremy Carr, a member of the firm.
Attorneys for Defendants/Appellants
Douglas and Brenda Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2014, I caused to be served a true and correct copy of the foregoing document, by the following:

Susan P. Weeks James Vernon and Weeks 1626 Lincoln Way Coeur d'Alene ID 83814	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
Val Nunemacher P O Box 9000 Coeur d'Alene ID 83816	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy

By: 
W. Jeremy Carr, Attorneys for Defendants/Appellants

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2014 JUL -9 PM 10:43

CLERK DISTRICT COURT

[Signature]
DEPUTY

1 W. JEREMY CARR
2 CLARK and FEENEY
3 Idaho State Bar # 6827
4 1229 Main Street
5 P.O. Drawer 285
6 Lewiston, ID 83501
7 Telephone: (208) 743-9516
8 Facsimile: (208) 746-9160
9 Attorneys for Defendants/Appellants,

10
11 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

13 CAPSTAR RADIO OPERATING COMPANY,)
14 a Delaware Corporation,)

15 Plaintiff,)

16 vs.)

17 DOUGLAS LAWRENCE and BRENDA J.)
18 LAWRENCE, husband and wife,)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)

Case No. CV02-07671

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, CAPSTAR RADIO OPERATING COMPANY,
a Delaware Corporation, and THEIR ATTORNEY, SUSAN P. WEEKS, JAMES, VERNON
and WEEKS, P.A. 1626 Lincoln Way, Coeur d'Alene, Idaho, 83814:

AND TO: THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, DOUGLAS LAWRENCE and BRENDA J. LAWRENCE,
husband and wife, appeal against the above-named Respondents, CAPSTAR RADIO OPERATING
COMPANY, a Delaware Corporation, to the Idaho Supreme Court from the *Final Judgment and Decree of*
Quiet Title and Permanent Injunction entered in the above entitled action on May 22, 2014, by the Honorable
Steve Verby and the *Memorandum Decision and Order* entered in the above entitled action on September

AMENDED NOTICE OF APPEAL

1

10, 2013, by the Honorable Steve Verby.

2. The party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the Appellants intend to assert in the appeal include the following:

- (a) Did the District Court error in determining that the plaintiff has ingress and egress easement by implication across the defendants' real property?
- (b) Did the District Court error in determining the easement for egress and ingress and utilities is for unlimited reasonable use?
- (c) Did the District Court error in determining the easement to be forty (40) feet in width?
- (d) Did the District Court error in determining the plaintiff has an ingress and egress easement by prescription across defendants' real property?
- (e) Did the District Court error in granting the scope of the plaintiff's easement across the defendants' real property?
- (f) Did the District Court error in that the defendants and their heirs, successors and assignees shall be enjoined from interfering with plaintiff's use or maintenance of the road traversing the defendant's real property?
- (g) Whether the plaintiffs had standing as tenants to bring a quiet title action against the defendants.

4. There has been no order entered sealing all or any portion of the record.

5. (a) A reporter's transcript has been requested and the estimated fee has been paid.

(b) The Appellants request the preparation of the reporter's standard transcript as defined in Rule 25(c) I.A.R. of the trial held on June 11, 2013, - June 20, 2013, in **electronic format**.

6. The Appellants do not request additional documents be added to the Clerk's Record.

Appellant only requests the documents automatically included under Rule 28 I.A.R.

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7. The Appellants request the following documents, charges, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: All exhibits admitted into evidence.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and Address:

Val Nunemacher
P O Box 9000
Coeur d'Alene ID 83816

(b) That the clerk of the district court has been paid the estimated fees for preparation of the designated reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 8th day of July, 2014.

CLARK and FEENEY

By: W. Jeremy Carr
W. Jeremy Carr, a member of the firm.
Attorneys for Defendants/Appellants
Douglas and Brenda Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2014, I caused to be served a true and correct copy of the foregoing document, by the following:

Susan P. Weeks James Vernon and Weeks 1626 Lincoln Way Coeur d'Alene ID 83814	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
Val Nunemacher P O Box 9000 Coeur d'Alene ID 83816	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy

By: W. Jeremy Carr
W. Jeremy Carr, Attorneys for Defendants/Appellants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAPSTAR RADIO OPERATING COMPANY,)
a Delaware Corporation)

Plaintiff)

vs)

DOUGLAS LAWRENCE and BRENDA J)
LAWRENCE, husband and wife)

Defendants)
_____)

Supreme Court Docket No. 42326-2015

Kootenai County Docket No. 2002-7671

CLERK'S CERTIFICATE OF EXHIBITS

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

I further certify that the following documents will be submitted as exhibits to the Record:

1. DEFENDANT'S EXHIBITS:

- (A) WARRANTY DEED-LAWRENCE
- (B) ACCESS LICENSE AGREEMENT BETWEEN NEXTEL WEST CORP
AND DOUGLAS AND BRENDA LAWRENCE
- (C) ASSIGNMENT OF LEASES – DEPOSITION EXHIBIT 4 FROM THE
DEPOSITION OF THOMAS MARTINICH
- (D) CERTIFICATE OF MERGER – DEPOSITION EXHIBIT 5 FROM THE
DEPOSITION OF THOMAS MARTINICH
- (E) COMMUNICATIONS LEASE AGREEMENT – DEPOSITION EXHIBIT 3

FROM DEPOSITION OF THOMAS MARTINICH

- (F) STATEMENT SIGNED BY DON SNODGRASS ON MAY 8, 2000
- (G) MAY 8, 2000 STATEMENT REFERENCED IN INCIDENT REPORT
00-9842
- (H) KOOTENAI COUNTY SHERIFF'S INCIDENT REPORTS FILED
AGAINST DOUGLAS LAWRENCE (2000-2002; 7 TOTAL)
- (I) APRIL 13, 2002 SPECTRASITE LETTER NOTICING DEFENDANTS
OF RENEWAL OF LICENSE AGREEMENT
- (J) AUGUST 28, 2002 KOOTENAI ELECTRIC LETTER REQUESTING TO
LOCK DEFENDANT'S GATE
- (K) OCTOBER 10, 2002 SIGNED ACKNOWLEDGMENT OF RECEIPT OF
KEY BY NEXTEL EMPLOYEE JIM HOLLIS
- (L) OCTOBER 17, 2002 DELIVERY CONFIRMATION OF KEY TO
TOM GRAPENSTER WITH AT&T
- (M) OCTOBER 16, 2002 SIGNED RECEIPT OF KEY TO ADELPHIA
- (N) OCTOBER 9, 2002 SIGNED RECEIPT OF KEY TO
KOOTENAI ELECTRIC
- (O) OCTOBER 9, 2002 SIGNED RECEIPT OF KEY TO
VERIZON
- (P) OCTOBER 15, 2002 EMAIL FROM SHEILA BERNARD (SPECTRASITE)
TO DOUGLAS LAWRENCE – SUBJECT [RE: BLOSSOM MOUNTAIN
ACCESS AGREEMENT
- (Q) OCTOBER 15, 2002 EMAIL FROM SHEILA BERNARD – SUBJECT
[ATTENTION DOUG]
- (R) OCTOBER 21, 2002 EMAIL FROM PAMELA WAITMAN (NEXTEL)
SUBJECT [BLOSSOM MTN CELL SITE ACCESS]

- (S) OCTOBER 24, 2002 UNDELIVERABLE LETTER TO NEXTEL COMMUNICATIONS
- (T) OCTOBER 24, 2002 RETURNED (UNACCEPTED) DELIVERY CONFIRMATION
- (U) OCTOBER 31, 2002 LETTER FROM RAYMOND GOODWIN (SPECTRASITE) TO DEFENDANTS
- (V) KOOTENAI COUNTY SHERIFF'S CRIME REPORTS 2002-2003 BY DOUGLAS LAWRENCE (2002-2003; 7 TOTAL)
- (W) JANUARY 13, 2003 LETTER FROM RAYMOND GOODWIN (SPECTRASITE) TO DEFENDANTS
- (X) JANUARY 9, 2003 LETTER FROM NEXTEL NOTICING DEFENDANTS OF ASSIGNMENT
- (Y) ENVELOPE OF MARCH 14, 2003 LETTER FROM NEXTEL
- (Z) DEFENDANT MACK'S AFFIDAVIT IN SUPPORT OF DEFENDANTS LAWRENCES' MOTION IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT TO INCLUDE PUNITIVE DAMAGES
- (AA) KOOTENAI COUNTY SHERIFF'S CRIME REPORT 03-21559 FILED SEPTEMBER 16, 2003 BY DOUGLAS LAWRENCE
- (BB) CHECK RECEIPT FOR APRIL 2007 PAYMENT FOR LICENSE AGREEMENT
- (CC) APRIL 16, 2007 LETTER FROM AMERICAN TOWER OFFERING LUMP SUM PAYMENT
- (DD) JULY 18, 2007 NOTICE OF DEFAULT SENT TO AMERICAN TOWER
- (EE) DELIVERY CONFIRMATION OF JULY 18, 2007 NOTICE OF DEFAULT
- (FF) KOOTENAI COUNTY SHERIFF'S DEPARTMENT LAW INCIDENT

TABLE SHOWING INCIDENT 07-23671

- (GG) LICENSE AGREEMENT BETWEEN TOWER ASSET SUB INC AND INFINITY COMMUNICATIONS
- (HH) TOWER ATTACHMENT LICENSE AGREEMENT BETWEEN TOWER ASSET SUB INC AND WIRED OR WIRELESS, INC
- (II) SITE SCHEDULE TO THE MASTER SITE LEASE AGREEMENT DATED APRIL 20, 1999
- (JJ) AFFIDAVIT OF JAMES STILLINGER PROVIDED IN CV03-5003
- (KK) RECORD OF ROAD AND GATE LOCATIONS IN PARCEL 21-8500
- (LL) NOVEMBER 17, 2000 BUSINESS CORRESPONDENCE BETWEEN COLBY MAY AND JOHN ROOK AND COPIED TO DEFENDANTS
- (MM) ANTENNA TOWER BUILDING AND REAL PROPERTY LEASE AGREEMENT BETWEEN JOHN ROOK AND TRINITY BROADCASTING NETWORK
- (NN) LEASE AGREEMENT BETWEEN ADELPHIA CABLE AND JOHN MACK AND THE DEFENDANTS
- (OO) MARCH 13, 2000 AFFIDAVIT OF WILBER MEAD
- (PP) FEBRUARY 1, 2002 STATEMENT FROM BLUE SKY BROADCASTING
- (QQ) ACCESS LICENSE AGREEMENT BETWEEN GREAT NORTHERN BROADCASTING AND THE DEFENDANTS
- (RR) COPY OF METSKER MAP DATED MARCH 1959 LARGER VERSION
- (SS) JUNE 28, 2007 AFFIDAVIT OF KOOTENAI COUNTY SURVEYOR BRUCE ANDERSON
- (TT) 1907 VIEWERS REPORT FOR MELICK ROAD
- (UU) JUNE 17, 1910 PLAT OF SURVEY FOR MELICK ROAD
- (VV) JULY 1977 EASEMENT IDAHO FOREST INDUSTRIES GRANTED TO

DON JOHNSON AND JOHN MCHUGH AND RECORDED AS
INSTRUMENT #773361

- (WW) AUGUST 13, 2007 DEPOSITION TRANSCRIPT OF HAROLD
FUNK
- (XX) AERIAL PHOTOGRAPHS OF SUBJECT AREA BY KOOTENAI
COUNTY KCWEBMAP (3 TOTAL)
- (YY) AERIAL PHOTOGRAPHS OF SUBJECT AREA BY GOOGLEEARTH
(5 TOTAL)
- (ZZ) AFFIDAVIT OF JOHN MACK IN SUPPORT OF DEFENDANTS' MOTION
FOR ENLARGEMENT
- (AAA) EMAILS FROM SHEILA BARNARD DATED 10/15/2002 (2 TOTAL)
- (BBB) EMAIL FROM PAMELA WAITMAN DATED 10/21/2002
- (CCC) EMAIL FROM SCOTT HAUG DATED 10/27/2003
- (DDD) AERIAL PHOTOGRAPHS OF SUBJECT AREA BY GOOGLEEARTH
SHOWING ROADS
- (EEE) AERIAL PHOTOGRAPHS OF ROAD SYSTEM AND GATES
IN SUBJECT AREA (32 TOTAL)
- (FFF) PHOTOGRAPHS OF GATES ON SUBJECT AREA ROADS
- (GGG) AERIAL VIEW AND MAPPING OF MELICK ROAD
- (HHH) VIEWER'S REPORT – MELICK ROAD
- (III) AERIAL PHOTOGRAPH OF THE SUBJECT PROPERTY DATED 1951
- (JJJ) AERIAL PHOTOGRAPH OF THE SUBJECT PROPERTY DATED 1970
- (KKK) AERIAL PHOTOGRAPH OF THE SUBJECT PROPERTY DATED 8/14/75
- (LLL) 2ND AMENDMENT TO FRITZ HEATH ESTATES PLAT

2. PLAINTIFF'S EXHIBITS:

- (1) ILLUSTRATIVE DEPICTION OF SECTIONS 15, 22 AND 21
- (2) REAL ESTATE SALES CONTRACT, FILED IN BOOK 55,
PAGE 118 ON AUGUST 28, 1968, REYNOLDS TO RADEN
- (3) REAL ESTATE CONTRACT, FILED IN BOOK 57, PAGE 119,
RADEN TO FUNK, APRIL 14, 1969
- (4) WARRANTY DEED FILED AS INSTRUMENT NO. 613471
MEAD TO FUNK, NOVEMBER 9, 1972
- (5) SALE AGREEMENT INSTRUMENT NO. 672112
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (6) SALE AGREEMENT INSTRUMENT NO. 672113
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (7) SALE AGREEMENT INSTRUMENT NO. 672114
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (8) SALE AGREEMENT INSTRUMENT NO. 672115
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (9) SALE AGREEMENT INSTRUMENT NO. 672116
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (10) SALE AGREEMENT INSTRUMENT NO. 672117
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (11) SALE AGREEMENT INSTRUMENT NO. 672118
FUNK TO HUMAN SYNERGISTICS, INC. JULY 10, 1975
- (12) STATUTORY WARRANTY DEED INSTRUMENT NO. 653865

- RYNOLDS TO RADEN AND MARCOE, SIGNED APRIL 15, 1974,
RECORDED JULY 25, 1974
- (13) STATUTORY WARRANTY DEED INSTRUMENT NO. 653864
RADEN AND MARCOE TO FUNK, RECORDED JULY 25, 1974
- (14) MEMORANDUM OF CONTRACT, FILED ON AS INSTRUMENT
NO. 732027 HUMAN SYNERGISTICS TO JOHNSTON AND
MCHUGH SIGNED MAY 16, 1977, RECORDED JUNE 1, 1977
- (15) ROADWAY EASEMENT INST. NO. 773361, IFI TO JOHNSTON
AND MCHUGH SIGNED JULY 11, 1977 RECORD JULY 6, 1978
- (16) MEMORANDUM OF SALE AGREEMENT INST. NO. 1098895,
JOHNSTON AND MCHUGH TO NAP, SIGNED
- (17) CORPORATION DEED INST. NO. 1114689, HUMAN
SYNERGISTICS TO JOHNSTON AND MCHUGH, SIGNED MAY
16, 1977, RECORDED APRIL 21, 1988
- (18) WARRANTY DEED INST. NO. 1279685, FUNK TO MACK
OCTOBER 22, 1992
- (19) WARRANTY DEED INST. NO. 1283911, FUNK TO HUMAN
SYNERGISTICS, SIGNED OCTOBER 29, 1992, RECORDED
NOVEMBER 29, 1992
- (20) DEED INST. NO. 1452670 NAP TO FARMANIAN JULY 3, 1996
- (21) CORPORATION DEED INST. NO. 1452959, NAP TO
FARMANIAN, JULY 8, 1996
- (22) EASEMENT INST. NO. 1454068, NAP TO OTHER PROPERTY

JULY 16, 1996

- (23) MUTUAL AGREEMENT GRANT OF EASEMENT AND QUIT
CLAIM DEED INST. NO. 1462711, FARMANIAN TO
MACK, SEPTEMBER 20, 1996
- (24) MEMORANDUM OF SALE AGREEMENT INST. NO. 1464206,
FARMANIAN TO LAWRENCE, SIGNED JULY 12, 1996,
RECORDED OCTOBER 1, 1996
- (25) QUITCLAIM DEED INST. NO. 1533768, LAWRENCE TO
LAWRENCE, APRIL 17, 1998
- (26) QUITCLAIM DEED INST. NO. 1543875, LAWRENCE TO
LAWRENCE, JUNE 29, 1998
- (27) WARRANTY DEED INST. NO. 1551840, JOHNSTON AND
MCHUGH TO NAP, SIGNED JULY 16, 1996, RECORDED
AUGUST 27, 1998
- (28) WARRANTY DEED INST. NO. 1551841, FARMANIAN TO
LAWRENCE, SIGNED JULY 5, 1996, RECORDED
AUGUST 27, 1996
- (29) DEED INST. NO. 720411, FUNK TO RASMUSSEN AND
CHAMBERLAIN, SIGNED AUGUST 26, 1976,
RECORDED JANUARY 7, 1977
- (30) WARRANTY DEED INSTRUMENT NO. 1161438 AND
RE-RECORDED AS INSTRUMENT NO. 1167510 FUNK
TO IDAHO BROADCASTING, SEPTEMBER 25, 1989

- (31C) QUITCLAIM DEED INSTRUMENT NO. 1168384,
IDAHO BROADCASTING TO KOOTENAI BROADCASTING,
NOVEMBER 29, 1989
- (32C) QUITCLAIM DEED INSTRUMENT NO. 1326440 KOOTENAI
BROADCASTING TO ROOK BROADCASTING ,
OCTOBER 25, 1993
- (33C.1)WARRANTY DEED INSTRUMENT NO. 1565152,
ROOK BROADCASTING TO AGM-NEVADA,
NOVEMBER 20, 1998
- (33C.2)WARRANTY DEED INSTRUMENT NO. 1656413 AGM-NEVADA
TO CAPSTAR OCTOBER 25, 2000
- (34) CHICAGO TITLE INSURANCE COMPANY POLICY NO. 13
0035 106 00001140
- (35) DEED INST. NO 708987 FUNK TO KOOTENAI ELECTRIC
COOPERATIVE AUGUST 16, 1976
- (36) DEED INST. NO. 993113 FUNK TO SONNELAND
NOVEMBER 29, 1984
- (37) WARRANTY DEED INST. NO. 497858, REYNOLDS TO GENERAL
TELEPHONE OCTOBER 17, 1966
- (38) RIGHT OF WAY EASEMENT INST. NO 494343, BLOSSOM AND
MEAD TO GENERAL TELEPHONE, SIGNED JULY 14, 1966,
RECORDED AUGUST 31, 1966
- (39) RIGHT OF WAY EASEMENT INST. NO. 494344, ULRICH TO

GENERAL TELEPHONE, AUGUST 31, 1966

- (40) BLOSSOM MOUNTAIN ESTATES PLAT BOOK 1, PAGE 42
- (41) RECORD OF SURVEY INST. NO. 15421875
- (42) KOOTENAI COUNTY ASSESSOR OFFICE SEGREGATION
REVISIONS SECTION 22
- (43) KOOTENAI COUNTY ASSESSOR OFFICE SEGREGATION
REVISIONS SECTION 21
- (44) GLO SURVEY OF TOWNSHIP 50 NO, RANGE NO. 5 WEST
- (45) BLOW UP OF GLO MAP IN SECTION 15, 21 AND 22
- (46) 1957 USGS HISTORICAL MAP OF SECTIONS 15, 21 AND 22
- (47) 1959 METSKER MAP
- (48) MELICK ROAD EXHIBIT MAP
- (49) 981 USGS MAP OF 1975 AERIAL
- (50) FUNK OWNERSHIP EXHIBIT
- (51) 2010 USGS MAP
- (52) VIEWER'S REPORT EXHIBIT
- (53) VIEWER REPORT 271 AND BRANCH CHANGE MELICK
ROAD
- (54) MACK AFFIDAVIT
- (55) DEED INST. NO. 1558483 ZUBER TO ZUBER
SEPTEMBER 11, 1998
- (56) DEED INST. NO. 1758296 ZUBER TO MACK
OCTOBER 9, 2002

- (57) MELICK ROAD OVERLAY
- (58) MELICK ROAD OVERLAY
- (59) CONDITIONAL USE PERMIT C-593-86
- (60) CONDITIONAL USE PERMIT NO. C-658-88
- (61) CONDITIONAL USE PERMIT NO. C-686-89
- (62) CONDITIONAL USE PERMIT NO. C-841-94
- (63) CONDITIONAL USE PERMIT NO. C-940-97
- (64) CONDITIONAL USE PERMIT NO. C-1058-01
- (65) CONDITIONAL USE PERMIT NO. C-1092-03
- (66) NOTICE INST. NO. 1403054
- (67) CIVIL VIOLATION NO. CV-4306.06.B
- (68) HAROLD FUNK DEPOSITION
- (69) GATE PICTURE
- (70) GATE PICTURE
- (71) GATE PICTURE
- (72) GATE PICTURE
- (73) GATE PICTURE
- (73A) LOCK PICTURE
- (74) SIMS LIESCHE 3/19/99 LETTER OF COUNTY OFFICIALS
- (75) 2/29/00 LAWRENCE LETTER TO DOUGLAS
- (76) 5/31/99 SIMS LIESCHE STATEMENT
- (77) LAWRENCE 6/1/2000 SUBMITTAL TO KOOTENAI COUNTY
PLANNING

- (78) 6/14/99(00) LAWRENCE LETTER TO KOOTENAI COUNTY
PROSECUTOR
- (79) 6/26/00 LAWRENCE LETTER TO KOOTENAI COUNTY
PLANNING DEPT
- (80) 6/30/00 LETTER TO SHERIFF
- (81) 12/5/00 PETITION FOR JUDICIAL REVIEW KOOTENAI CASE
CV00-7756
- (82) 10/19 VERIZON KEY LETTER AND 11/19/01 VERIZON
KEY RECEIPT
- (83) 6/10/03 VERIZON LETTER TO LAWRENCE
- (84) 10/10/03 STIMSON LETTER TO LAWRENCE
- (85) GREAT NORTHERN BROADCAST ACCESS LICENSE
AGREEMENT
- (86) BLUE SKY STATEMENT DATED 2/1/02
- (87) TOWER LICENSE AGREEMENT
ANY EXHIBIT ON DEFENDANTS' LIST
- (88) PICTURES
- (89) PICTURES
- (104) MAP OF MELLICK RD 1996-1997
- (105) SALES/CLOSING INFORMATION

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai

County, Idaho this 6 day of April, 2015.

Jim Brannon
Clerk of the District Court

Sherry Huffaker
Deputy Clerk



